

# District of Columbia Code

*1981 Edition*

Property of the District of Columbia Government





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# DISTRICT OF COLUMBIA CODE ANNOTATED

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## 1981 EDITION

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**With Provision for Subsequent Pocket Parts**

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CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,  
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT  
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT  
OF COLUMBIA BY REASON OF BEING GENERAL AND  
PERMANENT LAWS OF THE UNITED STATES), AS  
OF FEBRUARY 9, 1996, AND NOTES  
TO DECISIONS THROUGH  
MARCH 1, 1996

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VOLUME 9

1996 REPLACEMENT

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TITLE 45—REAL PROPERTY  
TITLE 46—SOCIAL SECURITY

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CHARLOTTESVILLE, VIRGINIA  
1996

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THE DISTRICT OF COLUMBIA

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## **USER'S GUIDE**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.



# **TITLES OF DISTRICT OF COLUMBIA CODE**

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5. Building Restrictions and Regulations.
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## **CHAPTER 1. POWERS RELATING TO REALTY.**

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45-101. "Power" defined.

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## § 45-101. “Power” defined.

A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1037; 1973 Ed., § 45-1001.)

**Uniform Disclaimer of Property Interests Act.** — See § 21-2091 et seq.

**Authority to file complaint for possession of property.** — Until recording of trust-

ee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. American Sec. Bank v. Cummings, 120 WLR 88 (Super. Ct. 1991).

## § 45-102. General power.

A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1038; 1973 Ed., § 45-1002.)

**Condition on exercise of power.** — For purposes of a qualifying life interest left to a wife under a testamentary trust for marital deduction, a power of appointment to the wife was general, even though the power was subject to a condition that it be exercised by will.

Estate of Mittleman v. Commissioner, 522 F.2d 132 (D.C. Cir. 1975).

**Release of powers.** — All general powers of appointment, whether presently exercisable or testamentary, can be released. Carroll v. Tobriner, 253 F. Supp. 87 (D.D.C. 1966).

## § 45-103. Special power.

A power is special:

(1) Where the persons or class of persons to whom the disposition of the lands under the power is to be made is designated;

(2) Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1039; 1973 Ed., § 45-1003.)

## § 45-104. Beneficial power.

A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1040; 1973 Ed., § 45-1004.)

**§ 45-105. Giving of absolute power — To owner of limited estate.**

Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1041; 1973 Ed., § 45-1005.)

**Section references.** — This section is referred to in § 45-108.

**§ 45-106. Same — To owner of unlimited estate.**

Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1042; 1973 Ed., § 45-1006.)

**Section references.** — This section is referred to in § 45-108.

**§ 45-107. Same — Where no remainder on grantee's estate.**

In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1043; 1973 Ed., § 45-1007.)

**Section references.** — This section is referred to in § 45-108.

**§ 45-108. Construction of power to devise inheritance given to tenant with limited estate.**

Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of §§ 45-105 to 45-107. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1044; 1973 Ed., § 45-1008.)

**§ 45-109. Right of grantor to reserve power.**

The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this chapter as if granted to another. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1045; 1973 Ed., § 45-1009.)

**§ 45-110. Liability of special and beneficial power in equity.**

Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1046; 1973 Ed., § 45-1010.)

**§ 45-111. General powers in trust.**

A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1047; 1973 Ed., § 45-1011.)

**§ 45-112. Special powers in trust.**

A special power is in trust:

(1) When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power;

(2) When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1048; 1973 Ed., § 45-1012.)

**§ 45-113. Trust powers imperative — Duty upon grantee.**

Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1049; 1973 Ed., § 45-1013.)

**§ 45-114. Same — Effect of grantee's right of selection of objects of trust.**

A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1050; 1973 Ed., § 45-1014.)

**§ 45-115. Beneficiaries to take equally unless otherwise directed; effect of giving trustee discretion.**

Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is

to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any 1 or more of such persons in exclusion of the others. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1051; 1973 Ed., § 45-1015.)

### § 45-116. Execution of trust powers for benefit of creditors and assignees.

The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1052; 1973 Ed., § 45-1016.)

### § 45-117. Writing needed to execute power.

No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1053; 1973 Ed., § 45-1017.)

**Authority to file complaint for possession of property.** — Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. American Sec. Bank v. Cummings, 120 WLR 88 (Super. Ct. 1991).

**Assignment by contract invalid.** — Where the power of appointment could be exercised only by will, an attempt to assign part of the donee's interest by a contract was invalid. Mondell v. Thom, 143 F.2d 157 (D.C. Cir. 1944).

### § 45-118. Power to be executed by devise, will, or grant, as directed.

Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1054; 1973 Ed., § 45-1018.)

**Cross references.** — As to wills, see §§ 18-108 and 18-303.

### § 45-119. Grantee may execute power without direct reference to such.

Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1055; 1973 Ed., § 45-1019.)

## CHAPTER 2. ESTATES IN LAND.

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45-202. Fee simple estates — Estates tail abolished.	45-213. Same — Alternative.
45-203. Same — Absolute or qualified.	45-214. Expectant estates — No defeat or bar unless provided for at creation.
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45-210. Future estates — Commencement.	45-221. Estates from month to month or from quarter to quarter.
45-211. Same — Remainder and conditional limitation.	45-222. Estates at will; termination; creation.
	45-223. Provisions applicable to personal property.

**§ 45-201. Recognized estates.**

Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates at will, and estates by sufferance. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1011; 1973 Ed., § 45-801.)

**Cross references.** — As to statute of frauds, see §§ 28-3501 and 28-3503.

**Leaseholds for a term of years are “es-**

**tates in land”.** Jacobsen v. Sweeney, 202 F.2d 461 (D.C. Cir. 1953).

**§ 45-202. Fee simple estates — Estates tail abolished.**

All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1012; 1973 Ed., § 45-802.)

**Estate tail converted into estate in fee simple.** — See Young v. Norris Peters Co., 27 App. D.C. 140 (1906); Atkins v. Best, 27 App.

D.C. 148 (1906); Young v. Munsey Trust Co., 111 F.2d 514 (D.C. Cir. 1940).

**§ 45-203. Same — Absolute or qualified.**

An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1013; 1973 Ed., § 45-803.)

**Qualified, determinable, or defeasible fees were known at common law and are recognized in the District of Columbia.** Roberds v. Markham, 81 F. Supp. 38 (D.D.C. 1948).

**§ 45-204. Freeholds; chattels real; chattel interests; conditions precedent or subsequent.**

Estates of inheritance and estates for life shall continue to be denominated

freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1014; 1973 Ed., § 45-804.)

**Leaseholds for a term of years are “estates in land”.** Jacobsen v. Sweeney, 202 F.2d 461 (D.C. Cir. 1953).

**A leasehold interest in realty for a term of years is personal property** and subject to execution as such. Stagecrafters' Club, Inc. v. District of Columbia Div. of Am. Legion, 110 F. Supp. 481 (D.D.C.), supplemental opinion, 111 F. Supp. 127 (D.D.C. 1953), aff'd, 211 F.2d 811 (D.C. Cir. 1954).

**Sale of tenant's leasehold interest as chattel is valid.** Stagecrafters' Club, Inc. v. District of Columbia Div. of Am. Legion, 110 F. Supp. 481 (D.D.C.), supplemental opinion, 111 F. Supp. 127 (D.D.C. 1953), aff'd, 211 F.2d 811 (D.C. Cir. 1954).

**Cited** in Gulf Motors, Inc. v. Fenner, App. D.C., 114 A.2d 543 (1955).

## § 45-205. Estates pur autre vie; when deemed freehold and when chattel real.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1015; 1973 Ed., § 45-805.)

**Cited** in Bobys v. Bobys, 284 F. Supp. 321 (D.D.C. 1968).

## § 45-206. Estates classified; possession; expectancy.

Estates are either in possession or in expectancy. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1016; 1973 Ed., § 45-806.)

## § 45-207. Estate in possession.

An estate in possession exists when the owner has an immediate right to the possession of the land. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1017; 1973 Ed., § 45-807.)

## § 45-208. Estate in expectancy.

An estate in expectancy is either a reversion or a future estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1018; 1973 Ed., § 45-808.)

## § 45-209. Reversions.

A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the devisor who has devised a particular estate less than his own, and which residue returns to his or their possession on the expiration of the particular estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1019; 1973 Ed., § 45-809.)

## § 45-210. Future estates — Commencement.

A future estate is one limited to commence at a future day, either without the intervention of a precedent estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1020; 1973 Ed., § 45-810.)

**Cited** in Singer v. Singer, App. D.C., 636 A.2d 422 (1994).

## § 45-211. Same — Remainder and conditional limitation.

If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1021; 1973 Ed., § 45-811.)

**Cross references.** — As to proceeding by remainderman to determine whether or not life tenant is still alive, see §§ 16-1151 to 16-1158.

**Cited** in Singer v. Singer, App. D.C., 636 A.2d 422 (1994).

## § 45-212. Same — Vested and contingent.

A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1022; 1973 Ed., § 45-812.)

**There may be vested remainders in equitable estates as well as in legal estates.** District of Columbia v. Clark, 175 F.2d 821 (D.C. Cir. 1948).

**The law favors the vesting of estates**, and is inclined to treat conditions as subsequent rather than precedent. Green v. Gordon, 38 App. D.C. 443 (1912).

**Estates vest at the earliest possible moment**, in the absence of testamentary intent to the contrary. Green v. Gordon, 38 App. D.C. 443 (1912).

**Adverbs of time in devise relate to time of enjoyment of estate.** — Adverbs of time — as where, there, after, from, etc. — in a devise of a remainder are construed to relate merely to the time of the enjoyment of the estate, and not the time of the vesting interest. Green v. Gordon, 38 App. D.C. 443 (1912); District of Columbia v. Clark, 175 F.2d 821 (D.C. Cir. 1948).

**Interest held “vested”.** — Where testator devised his residuary estate to his wife for life and on her death to his daughters in fee simple

share and share alike and “in the event that either of them be then dead unto the survivor of them”, the daughters acquired a “vested interest” and not a “contingent interest”. O’Neill v. District of Columbia, 132 F.2d 601 (D.C. Cir. 1942).

Where a testatrix devised realty to her daughter for life and then to the testatrix’s 3 sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and directed that, if daughter should die without issue, then to the testatrix’s 3 sons, their heirs and assigns forever share and share alike, the sons each had a vested remainder in one-fourth of property and contingent remainder in one-twelfth. Pyne v. Pyne, 154 F.2d 297 (D.C. Cir. 1946).

Under a will giving a life estate in a testamentary trust to the testator’s stepdaughter, and providing that the remainder should be divided, in equal shares, among the testator’s nephews and nieces, each nephew and niece named in the will took a “vested remainder interest” upon the testator’s death, and not a

"contingent remainder interest." American Sec. & Trust Co. v. Sullivan, 72 F. Supp. 925 (D.D.C. 1947).

**Interest held "contingent remainder".** — Where an interest devised to grandniece followed a life estate to testator's widow, it was a "remainder," and where it was to become effective only on the death of testator's 2 daughters without descendants it was a "contingent remainder," and where only 1 daughter had died without descendants such contingent remainder had not vested, and until it had, the grandniece could take nothing. Lewis v. Cockrell, 80 F. Supp. 380 (D.D.C. 1948).

**Vested and contingent estates distinguished.** — See Fields v. Gwynn, 19 App. D.C. 99 (1901); Green v. Gordon, 38 App. D.C. 443 (1912); Reeves v. American Sec. & Trust Co., 115 F.2d 145 (D.C. Cir.), cert. denied, 311 U.S. 710, 61 S. Ct. 318, 85 L. Ed. 461 (1940).

#### **Alternative and supplanting limitations.**

— In terms of the law of future interests, there are alternative limitations and supplanting limitations. The former requires the survival of the remaindermen to the end of the preceding interests, while the latter does not necessarily require such survival. The latter imposes a condition, the happening of which replaces the remaindermen with another. Scott v. Powell, 182 F.2d 75 (D.C. Cir. 1950).

**Cited** in Montgomery v. Brown, 25 App. D.C. 490 (1905); Keep v. District of Columbia, 181 F.2d 789 (D.C. Cir. 1950); Caine v. Payne, 182 F.2d 246 (D.C. Cir.), cert. denied, 340 U.S. 855, 71 S. Ct. 72, 95 L. Ed. 626 (1950); Bank of Galesburg v. Lawrenson, 240 F.2d 31 (D.C. Cir. 1956); Riggs Nat'l Bank v. Washington Hosp. Ctr. Health Sys., 117 WLR 1833 (Super. Ct. 1989); Singer v. Singer, App. D.C., 636 A.2d 422 (1994).

### **§ 45-213. Same — Alternative.**

Two or more future estates may be created to take effect in the alternative, so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1026; 1973 Ed., § 45-813.)

### **§ 45-214. Expectant estates — No defeat or bar unless provided for at creation.**

No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1029; 1973 Ed., § 45-814.)

**Dower rights in expectant estates.** — This section and § 45-215 do not change the common-law rule that a widow is not entitled to dower in lands to which her husband had a

remainder in fee, if he predeceases the life tenant. Talty v. Talty, 40 App. D.C. 587 (1913).

**Cited** in Pyne v. Pyne, 154 F.2d 297 (D.C. Cir. 1946).

### **§ 45-215. Same — Descendible, devisable, and alienable.**

Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1030; 1973 Ed., § 45-815.)

**Interests, whether contingent or vested, are assignable,** but one may assign only that

which he has. Pyne v. Pyne, 154 F.2d 297 (D.C. Cir. 1946).

## § 45-216. Tenancies in common, tenancies by the entireties, and joint tenancies.

(a) Every estate granted or devised to 2 or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed.

(b) An interest in property, whether held in tenancy in common, joint tenancy, or tenancy by the entirety, may be granted by 1 or more persons, as grantor or grantors:

(1) To 1 of them alone as grantee; or

(2) To the following, as grantees in tenancy in common, joint tenancy, or tenancy by the entirety:

(A) The grantors alone;

(B) Two or more of the grantors;

(C) The grantor or grantors and another person or persons; or

(D) One or more of the grantors and another person or persons. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 1; 1973 Ed., § 45-816; Apr. 27, 1994, D.C. Law 10-110, § 2(d), 41 DCR 1023.)

**Effect of amendments.** — D.C. Law 10-110 deleted the former last sentence in (a); and added (b).

**Legislative history of Law 10-110.** — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

**Intent of section.** — This section was intended to reverse the common-law rule that a grant or devise to a number of people, without more, creates a joint tenancy. *Coleman v. Jackson*, 286 F.2d 98 (D.C. Cir. 1960), cert. denied, 366 U.S. 933, 81 S. Ct. 1656, 6 L. Ed. 2d 391 (1961).

**Courts to effect grantor’s intention.** — This section does not excuse courts from determining and effecting the intention of the grantor as it appears on the face of the conveyance. *Coleman v. Jackson*, 286 F.2d 98 (D.C. Cir. 1960), cert. denied, 366 U.S. 933, 81 S. Ct. 1656, 6 L. Ed. 2d 391 (1961).

The statutory presumption that a conveyance to 2 or more persons creates a tenancy in common applies only when there is no expression to the contrary in the conveyance. *Coleman v. Jackson*, 286 F.2d 98 (D.C. Cir. 1960), cert. denied, 366 U.S. 933, 81 S. Ct. 1656, 6 L. Ed. 2d 391 (1961).

Under deed of house “to Herbert L. Wright and Mattie G. Wright, his wife, and Pauline E. Liner . . . as joint tenants,” the husband and wife acquired a one-half interest as tenants by the entirety and the other party acquired a one-half interest jointly with the entirety, particularly where a consideration of the transactions with respect to the property indicated that such result was the most likely intent of the parties. *Daniel v. Wright*, 352 F. Supp. 1 (D.D.C. 1972).

**Estates by the entireties still exist in the District of Columbia in both personality and realty.** *Flaherty v. Columbus*, 41 App. D.C. 525 (1914).

This section does not abolish common-law tenancies by the entireties. *Settle v. Settle*, 8 F.2d 911 (D.C. Cir. 1925).

Where a prior adjudication involves a spouse who owns property as a tenant by the entireties with the other spouse, and the dispute concerns the property so owned, the prior judgment against one spouse is binding on both spouses in any later proceeding. *Williams v. Gerstenfeld*, App. D.C., 514 A.2d 1172 (1986).

**Tenancies by the entirety not affected.** — The continuing existence of tenancies by the entirety was not affected by the passage of this section. *Roberts & Lloyd, Inc. v. Zyblut*, 122 WLR 2157 (Super. Ct. 1994).

**Common law.** — Conveyances to a husband and wife, their heirs and assigns forever, prior to the adoption of this section, created a tenancy by the entirety. *Blount v. United States*, 59

Ct. Cl. 328 (1924), appeal dismissed, 273 U.S. 769, 47 S. Ct. 20, 71 L. Ed. 2d 883 (1926).

Where the death of the testator occurred before the enactment of this section, the common law applied. *Noyes v. Parker*, 92 F.2d 562 (D.C. Cir. 1937).

Prior to the enactment of this section, there was in force in the District of Columbia a common-law rule that a conveyance or devise to 2 or more persons, whether as a class or by name, without sufficient indication in instrument of intention that they were to hold in severalty, should be construed as creating a joint tenancy and not a tenancy in common. *American Sec. & Trust Co. v. Sullivan*, 72 F. Supp. 925 (D.D.C. 1947).

**A tenant in common owns an undivided interest in the property**, and such tenants have no separate estate or interest in any distinct portion of the property over which they have simultaneously rights of property, each being interested according to the extent of his share in every part of the whole property and its proceeds. *Deming v. Turner*, 63 F. Supp. 220 (D.D.C. 1945).

**Estate held tenancy in common.** — Where a brother and sister were engaged in a joint business venture regarding a piece of property, the title being in her name solely as a matter of convenience, they were in effect tenants in common. *Sheehy v. O'Donoghue*, 94 F.2d 252 (D.C. Cir. 1937).

Land which was conveyed to a husband and wife as joint tenants was held by them as "tenants by the entirety." *Herb v. Gerstein*, 41 F. Supp. 634 (D.D.C. 1941).

Where a testamentary trust directs that the children of the deceased remainderman should take the share that the parents would have taken, the children of a deceased remainderman took the share of their parent as "tenants in common," and not as "joint tenants." *American Sec. & Trust Co. v. Sullivan*, 72 F. Supp. 925 (D.D.C. 1947).

Where a testator devises his estate to named persons, to be divided equally, those persons take as tenants in common. *Liberty Nat'l Bank v. Smoot*, 135 F. Supp. 654 (D.D.C. 1955).

Where prior to divorce, a house was held by the parties as tenants by the entirety, as a result of the divorce, the parties owned the property as tenants in common. *Moore v. Moore*, 120 WLR 2393 (Super. Ct. 1992).

**Estate held joint tenancy.** — Where a man and woman were disabled from holding property by the entireties because they were not legally married, the deed conveying property to them and purporting to create a tenancy by the entireties created, instead, a joint tenancy, not a tenancy in common. *Coleman v. Jackson*, 286 F.2d 98 (D.C. Cir. 1960), cert. denied, 366 U.S. 933, 81 S. Ct. 1656, 6 L. Ed. 2d 391 (1961).

**Cited in** *Sandler v. Wertlieb*, App. D.C., 60 A.2d 222 (1948); *Maynard v. Sutherland*, 313 F.2d 560 (D.C. Cir. 1962); *Prather v. Hill*, App. D.C., 250 A.2d 690 (1969); *In re Estate of Wall*, 440 F.2d 215 (D.C. Cir. 1971); *Snipes v. Douglass*, App. D.C., 319 A.2d 326 (1974); *Sarbacher v. McNamara*, App. D.C., 564 A.2d 701 (1989).

## § 45-217. Coparcenary estates abolished.

There shall be no estate in coparcenary in the District, and where 2 or more persons inherit from an intestate they shall be tenants in common. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 956; 1973 Ed., § 45-817.)

## § 45-218. Estates for years.

An estate for a determined period of time is an estate for years. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1032; 1973 Ed., § 45-818.)

**An ordinary lease of tenancy for years must be certain as to commencement, duration and termination** or be capable of being made certain by reference to some collateral event or thing which in itself is certain. *Smith's Transf. & Storage Co. v. Hawkins*, App. D.C., 50 A.2d 267 (1946).

**A lease for a term of years creates an estate in the grantee**, and the rent reserved may be a lump sum, payable either at the commencement of the term or at its end, subject to such conditions as the lease imposes. *Isquith v. Athanas*, App. D.C., 33 A.2d 733 (1943).

## § 45-219. Estates from year to year.

An estate expressed to be from year to year shall be good for 1 year only. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1033; 1973 Ed., § 45-819.)

**Holding over creates tenancy at sufferance.** — A lease for 1 year, with a provision that unless the premises are vacated on the day of the expiration of the term, the lessee shall become a tenant for another year, creates a

tenancy for 1 year only, and the tenant holding over becomes a tenant at sufferance. Morse v. Brainerd, 42 App. D.C. 448 (1914); Soper v. Myers, 45 App. D.C. 286 (1916).

## § 45-220. Estates by sufferance.

All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hirings by the month or at any specified rate per month, shall be deemed estates by sufferance. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1034; June 30, 1902, 32 Stat. 538, ch. 1329; 1973 Ed., § 45-820.)

**Cross references.** — As to statute of frauds, see §§ 28-3501 and 28-3503.

**This section is mandatory** and neither parties nor courts are at liberty to disregard its express policy. Warthen v. Lamas, App. D.C., 43 A.2d 759 (1945).

**Section construed as part of lease.** — This section is as much a part of a lease as though this section had been written into lease. Warthen v. Lamas, App. D.C., 43 A.2d 759 (1945).

**Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance,** and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. Cavalier Apts. Corp. v. McMullen, App. D.C., 153 A.2d 642 (1959).

The statutory tenancy by sufferance is entirely different from the common-law tenancy by sufferance, and is similar to the common-law tenancy at will. Comedy v. Vito, App. D.C., 492 A.2d 276 (1985).

**Common law.** — At common law a tenant by sufferance had no estate in premises, was not in privity with the landlord, could not maintain action of trespass against the landlord, was entitled to no notice to quit, was not liable for rent, and had little more than a right to insist he was not a trespasser. Hampton v. Mott Motors, Inc., App. D.C., 32 A.2d 247 (1943).

At common law, a tenant holding over and paying rent became a tenant from year to year and the holding over was impliedly subject to all the covenants of the expired lease. Hampton v. Mott Motors, Inc., App. D.C., 32 A.2d 247 (1943).

**Tenants in possession of property under a lease which has expired are tenants by**

**sufferance.** Weaver v. Koester, 294 F. 1011 (D.C. Cir. 1924).

In the absence of other evidence, where tenant remains in possession after the expiration of his lease such holding over presumptively creates a mere tenancy by sufferance. Warthen v. Lamas, App. D.C., 43 A.2d 759 (1945).

**Requirement of rent.** — A tenancy at sufferance requires the payment of rent or "hirings" or a "rate per month" to accompany the estate. Smith v. Town Ctr. Mgt. Corp., App. D.C., 329 A.2d 779 (1974).

**Tenancy by sufferance created.** — Where in the lease the tenant agreed to pay insurance, and paid the same beyond the term of the lease, such payment did not extend the lease and he was a tenant by sufferance. Forster v. Eliot, 282 F. 735 (D.C. Cir. 1922).

A tenant under a 6-month lease becomes a tenant by sufferance on its expiration, where the notice of renewal was verbal and not written. National Cafes, Inc. v. Elite Laundry Co., 18 F.2d 828 (D.C. Cir. 1927).

A tenant holding an apartment under a verbal hiring by the month was a tenant at sufferance. Westchester Apts., Inc. v. Keroes, App. D.C., 32 A.2d 869 (1943).

The status of a lessee upon remaining in possession of leased premises after purchaser's 90-day notice to quit expired was that of hold-over tenant or tenant by sufferance. Fisher v. Parkwood, Inc., App. D.C., 213 A.2d 757 (1965).

When a tenant remains in the building after the expiration of the lease and continues to pay the rent, he becomes by operation of this section a tenant by sufferance. Oliver T. Carr Mgt., Inc. v. National Delicatessen, Inc., App. D.C., 397 A.2d 914 (1979).

**Tenancy by sufferance not created.** — The fact that the landlord called the tenant a tenant by sufferance in complaint in action for possession of premises filed immediately upon the expiration of term of the lease, did not create a tenancy by sufferance so as to require landlord to first give the tenant a 30-day notice since quoted term was a legal conclusion. *Bell v. Westbrook*, App. D.C., 50 A.2d 264 (1946).

A lapse of 2 weeks between the expiration of the lease and the filing of the suit is not sufficient to establish a tenancy by sufferance under the terms of this section. *Williams v. John S. Donohoe & Sons*, App. D.C., 68 A.2d 239 (1949).

Where the lease contained an option to renew for an additional term upon the giving of written notice by the lessee, the mailing of an unsigned renewal notice bearing a rubber-stamped mark of tenant's trade name, enclosed in an envelope containing tenant's rental check signed by him and also bearing his trade name, was sufficient compliance with the requirements of the lease. *Worthington v. Serkes*, App. D.C., 111 A.2d 877 (1955).

An arrangement whereby defendant was occupying his girlfriend's apartment rent free, and at her indulgence, does not constitute tenancy by sufferance. *Jackson v. United States*, App. D.C., 357 A.2d 409 (1976).

**Verbal hiring by the month.** — A tenancy under a verbal hiring by the month, though deemed a tenancy at sufferance by this section, is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate from month to month, or an estate at will. *Keroes v. Westchester Apts., Inc.*, App. D.C., 36 A.2d 263 (1944).

**Renewal of lease.** — Where the tenant remained in possession and paid the increased rent required by the option for an additional term after the initial term had expired, the tenant affirmatively indicated his intent to exercise the option and did not hold over only as a tenant by sufferance. *Harris v. Gindes*, App. D.C., 265 A.2d 598 (1970).

**Notice to vacate.** — A tenant on expiration of 1-year lease becomes a tenant by sufferance,

and is entitled to 30 days notice to vacate. *H.L. Rust Co. v. Drury*, 68 F.2d 167 (D.C. Cir. 1934).

A tenant who remains in possession paying rent after expiration of written lease becomes a tenant by sufferance not within the common-law meaning of the term, and hence such tenancy could be terminated by either party upon 30 days notice. *Hampton v. Mott Motors, Inc.*, App. D.C., 32 A.2d 247 (1943).

A lessee who occupied commercial property as a hold-over tenant after his 3 years written lease had expired was a tenant by sufferance and his tenancy was subject to termination on 30 days' notice. *Lake v. Angelo*, App. D.C., 163 A.2d 611 (1960).

**Lease covenants applied to tenant holding over.** — Where the tenant held over for about 30 months after expiration of the written lease, the tenancy created by holding over was impliedly subject to the covenant of the lease imposing upon the tenant liability for cost of needful repairs. *Hampton v. Mott Motors, Inc.*, App. D.C., 32 A.2d 247 (1943).

A holding over by the tenant after the expiration of the lease is subject to all covenants and terms of the original lease which are applicable to the new situation. *Hall v. Henry J. Robb, Inc.*, App. D.C., 32 A.2d 707 (1943).

**Subletting as termination of tenancy.** — Where a tenant has only an estate at sufferance, if the tenant sublets contrary to the landlord's wishes, the landlord may terminate the tenancy immediately. *Keroes v. Westchester Apts., Inc.*, App. D.C., 36 A.2d 263 (1944).

**Cited in** *Boss v. Hagan*, 261 F. 254 (D.C. Cir. 1919); *Trammel v. Estep*, App. D.C., 42 A.2d 501 (1945); *Miller v. Plumley*, App. D.C., 77 A.2d 173 (1950); *Bass v. American Sec. & Trust Co.*, App. D.C., 124 A.2d 590 (1956); *Williams v. Tencher-Walker, Inc.*, App. D.C., 125 A.2d 58 (1956); *Summerbell v. McDonnell*, App. D.C., 197 A.2d 150 (1964); *Wilson v. John R. Pinkett, Inc.*, App. D.C., 265 A.2d 778 (1970); *Brown v. Young*, App. D.C., 364 A.2d 1171 (1976); *Merriweather v. District of Columbia Bldg. Corp.*, App. D.C., 494 A.2d 1276 (1985); *Estate of Wells v. Estate of Smith*, App. D.C., 576 A.2d 707 (1990).

## § 45-221. Estates from month to month or from quarter to quarter.

An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1035; 1973 Ed., § 45-821.)

**A tenancy from month to month is a tenancy for a month certain plus an expectancy or possibility of continuation** for 1 or more similar periods, and until rightful

notice of termination is given, this expectancy ripens at the turn of each month to a true tenancy for the ensuing month. *Dorado v. Loew's, Inc.*, App. D.C., 88 A.2d 188 (1952).

Cited in *Wilson v. John R. Pinkett, Inc.*, App. D.C., 265 A.2d 778 (1970).

### § 45-222. Estates at will; termination; creation.

An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate shall not exist or be created except by express contract; provided, however, that in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036; 1973 Ed., § 45-822.)

**Cross references.** — As to forcible entry and detainer, see §§ 16-1501 to 16-1505, and 22-3102.

**Intent of Congress.** — Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time peaceably to remove himself and his belongings from the property sold. *Thornhill v. Atlantic Life Ins. Co.*, 70 F.2d 846 (D.C. Cir. 1934).

**Lessee of property sold under foreclosure proceedings becomes the tenant of the purchaser.** *Bliss v. Duncan*, 44 App. D.C. 93 (1915).

**Person in possession of foreclosed property.** — Where real property is sold under the foreclosure of a deed of trust, the grantor of the deed of trust, or anyone in possession claiming under him, becomes a tenant at will of the purchaser at foreclosure and is entitled to 30 days notice to quit. *Thompson v. Mazo*, App. D.C., 245 A.2d 122 (1968).

**Meaning of “tenant” at common law.** — A tenant at common law is one who holds or possesses lands by any kind of right or title. *Simpson v. Jack Spicer Real Estate, Inc.*, App. D.C., 396 A.2d 212 (1978).

**Tenancy at will does not operate to impose contractual obligations upon the parties.** *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

Cited in *Spruill v. Brooks*, App. D.C., 68 A.2d 204 (1949); *Surratt v. Real Estate Exch., Inc.*, App. D.C., 76 A.2d 587 (1950); *Goody's, Inc. v. Stern's Equip. Co.*, App. D.C., 110 A.2d 311 (1955); *Hyde v. Brandler*, App. D.C., 118 A.2d 398 (1955); *Rinaldi v. Wallace*, App. D.C., 293 A.2d 847 (1972); *Smith v. Town Ctr. Mgt. Corp.*, App. D.C., 329 A.2d 779 (1974); *Administrator of Veterans Affairs v. Valentine*, App. D.C., 490 A.2d 1165 (1985); *Merriweather v. District of Columbia Bldg. Corp.*, App. D.C., 494 A.2d 1276 (1985); *Valentine v. United States*, 706 F. Supp. 77 (D.D.C. 1989).

### § 45-223. Provisions applicable to personal property.

All the provisions of this chapter and of §§ 45-302 to 45-304, 45-403, and 45-404 shall apply to personal property generally except where from the nature of the property they are inapplicable. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036; June 30, 1902, 32 Stat. 538, ch. 1329; 1973 Ed., § 45-823.)

### CHAPTER 3. CONVEYABLE ESTATES AND METHODS OF CONVEYANCE.

Sec.

- 45-301. Present or future and vested or contingent interests conveyed by deed or will.
- 45-302. Perpetuities — Charitable uses excepted.
- 45-303. Same — Chattels real.
- 45-304. Same — Effect upon estates created by deed or will.

Sec.

- 45-305. Title conveyable by anyone claiming such.
- 45-306. Deed or will necessary for more than one-year term or for limitation upon such.
- 45-307. Perpetuities; pensions and employee trusts excepted.

#### § 45-301. Present or future and vested or contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise may be created by deed. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 512; June 30, 1902, 32 Stat. 532, ch. 1329; 1973 Ed., § 45-101.)

**Cross references.** — As to conveyance or incumbrance of property acquired after insanity or absence of 7 years of spouse, see § 19-104.

As to release of dower, see § 19-107a.

As to statute of frauds, see §§ 28-3501 and 28-3503.

**Assignability of interests.** — One's interest whether contingent or vested, is assignable, but one may assign only that which he has. Pyne v. Pyne, 154 F.2d 297 (D.C. Cir. 1946).

**Title does not pass by owner's inaction.** — Once title vests, it stays vested until it

passes by grant, by descent, by adverse possession or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. Faulks v. Schrider, 99 F.2d 370 (D.C. Cir. 1938).

**A possibility of reverter is not an estate** under the District Code but it is an interest in property and any interest in property may be disposed of by deed or will. Scott v. Powell, 182 F.2d 75 (D.C. Cir. 1950).

**Cited in Singer v. Singer, App. D.C., 636 A.2d 422 (1994).**

#### § 45-302. Perpetuities — Charitable uses excepted.

Except in the case of gifts or devises to charitable uses, every future estate, whether of freehold or leasehold, whether by way of remainder or without a precedent estate, and whether vested or contingent, shall be void in its creation which shall suspend, or may by possibility suspend, the power of absolute alienation of the property, so that there shall be no person or persons in being by whom an absolute fee in the same, in possession, can be conveyed, for a longer period than during the continuance of not more than 1 or more lives in being and 21 years thereafter. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1023; 1973 Ed., § 45-102.)

**Section references.** — This section is referred to in §§ 45-223 and 45-1726.

**This section is made applicable to personalty as well as to realty by § 45-223.** Burdick v. Burdick, 33 F. Supp. 921 (D.D.C. 1940), rev'd on other grounds sub nom. Gertman v. Burdick, 123 F.2d 924 (D.C. Cir. 1942), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Or else gift will be void.** — If a will attempts to make the income from testator's estate payable to testator's children for life and then to create life estates in the offspring of the children, if there be any, for an indefinite number of generations, the rule against perpetuities would be violated, and the gift would be void. Hilton v. Kinsey, 185 F.2d 885 (D.C. Cir. 1950).

**Period of restraint on alienation of ac-**

**cumulations.** — There is in the District of Columbia no specific statutory limitation upon restraint on alienation of accumulations. *Burdick v. Burdick*, 33 F. Supp. 921 (D.D.C. 1940), rev'd on other grounds sub nom. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

Under the common law of the United States and of the District of Columbia, accumulation of income of a testamentary trust is permitted for as long as the period of the rule against perpetuities. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Effect of statutory period of permissible accumulations.** — Where there is a statutory permissible period, an accumulation of income of a testamentary trust is bad only with respect to the excess, whereas an accumulation that violates the common law of lives in being plus 21 years is void in its entirety. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Capacity of the ultimate takers is irrelevant** on the question whether a future estate violates this section, and it is the instrument creating the future estate which must be examined to determine whether the estate violates this section. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

This section is not intended to make void in its creation any future estate which is limited to take effect immediately at the expiration of the statutory period for the reason that 1 of the takers has temporary incapacity to convey. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Power of alienation suspended by law.** — Where the trustees under a will have at all times the power to alienate, the trust does not violate this section, and the possibility of suspension of the power of alienation because of the infancy or disability of the beneficiaries at the date of distribution does not invalidate the trust, such suspension being made by law and not by the will. *Burdick v. Burdick*, 33 F. Supp. 921 (D.D.C. 1940), rev'd on other grounds sub nom. *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Time when period begins.** — In determining the validity of an exercise of a power of appointment, the period during which the power of alienation might be suspended begins at the death of the donor of the power. *Mondell v. Thom*, 143 F.2d 157 (D.C. Cir. 1944).

**Existing facts may be considered.** — Facts existing when the donee of a power of appointment dies exercising the power by will,

may be considered in determining whether absolute ownership is to vest under the exercise of such power during the required lives in being plus 21 years from the death of the donor. *Mondell v. Thom*, 143 F.2d 157 (D.C. Cir. 1944).

**Severability of gift from invalid provisions.** — Where a testamentary exercise of power, which created trust for testator's widow for life and then for daughters until they reach the age of 25, was invalid as unduly suspending the power of alienation, the widow's life interest could not be validated by being separated from the other provisions. *Mondell v. Thom*, 143 F.2d 157 (D.C. Cir. 1944).

Where the immediate testamentary trust gifts of life estate to the widow and remainders to 2 nephews were valid and severable from subsequent gifts to others, if such subsequent gifts were invalid, such invalidity would not affect the validity of the prior gifts to widow and nephews. *Bliss v. Shea*, 230 F.2d 825 (D.C. Cir. 1956).

**Open class membership invalid.** — A life estate left to a class consisting of persons in being but which may open and let in other members who are not in being at the time of the testator's death would be obnoxious to the rule against perpetuities. *Lewis v. Cockrell*, 80 F. Supp. 380 (D.D.C. 1948).

**Alternative contingency.** — If the testator distinctly makes his gift over to depend upon an alternative contingency, or upon either of 2 contingencies, 1 of which may be too remote and the other cannot be, its validity depends upon the event. *Wills v. Maddox*, 45 App. D.C. 128, cert. denied, 242 U.S. 640, 37 S. Ct. 113, 61 L. Ed. 541 (1916).

**Invalidity of the prior devise would not benefit the contingent remainderman** where the remainder has not vested. Instead, intestacy would result as to the property covered by the prior devise. *Lewis v. Cockrell*, 80 F. Supp. 380 (D.D.C. 1948).

**Savings clause to eliminate invalid provisions.** — A will which contained a savings clause would be construed to provide that trusts for remaindermen would terminate when the beneficiary reached the age specified in the will or 21 years from the date of death of the life beneficiary, whichever occurred earlier, so as not to violate this section's rule against perpetuities. *In re Estate of Burrough*, 521 F.2d 277 (D.C. Cir. 1975).

**Exception for charitable uses.** — Gifts to charitable uses do not come within the purview of the law against perpetuities. *Washington Loan & Trust Co. v. Hammond*, 278 F. 569 (D.C. Cir. 1922).

**Elements of a charitable trust.** — One of the distinguishing elements of a charitable trust is the indefiniteness permitted as to beneficiaries. *Washington Loan & Trust Co. v. Hammond*, 278 F. 569 (D.C. Cir. 1922).

**Exception for cemetery maintenance trusts.** — Section 27-113 permits trust for the perpetual maintenance of cemetery lots and monuments, and is not in conflict with the rule against perpetuities. *Iglehart v. Iglehart*, 204 U.S. 478, 27 S. Ct. 329, 51 L. Ed. 575 (1907).

**Trust held void as an attempt to create a perpetuity.** Landram v. Jordan, 203 U.S. 56, 27 S. Ct. 17, 51 L. Ed. 88 (1906); American Sec. & Trust Co. v. Cramer, 175 F. Supp. 367 (D.D.C. 1959).

A testamentary exercise of power of appointment, creating a trust for testator's widow for life and thereafter for daughters until they

reach the age of 25 is invalid though widow was alive when donor of power died, since daughter might reach 25 more than 21 years after widow's death. *Mondell v. Thom*, 143 F.2d 157 (D.C. Cir. 1944).

**Future interests created held not to violate the rule against perpetuities.** *Gertman v. Burdick*, 123 F.2d 924 (D.C. Cir. 1941), cert. denied, 315 U.S. 824, 62 S. Ct. 917, 86 L. Ed. 1220 (1942).

**Cited** in *Iglehart v. Iglehart*, 26 App. D.C. 209 (1905), aff'd, 204 U.S. 478, 27 S. Ct. 329, 51 L. Ed. 575 (1907); *McDonald v. Maxwell*, 12 F.2d 822 (D.C. Cir. 1926).

### § 45-303. Same — Chattels real.

The provisions aforesaid as to future estates shall apply to limitations of chattels real as well as to freehold estates, so that the absolute ownership of a term for years and power to dispose of the same shall not be suspended for a longer period than the absolute power of alienation in respect to a fee simple. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1024; 1973 Ed., § 45-103.)

**Section references.** — This section is referred to in § 45-223.

**Trustees possess requisite property interest for due process protection.** — In the District of Columbia, a trustee under a deed of trust has the requisite property interest de-

serving of due process protection. By statute, a trustee under a deed of trust is deemed to have a qualified fee simple, an estate which may pass to his or her heirs. *District of Columbia v. Mayhew*, App. D.C., 601 A.2d 37 (1991).

### § 45-304. Same — Effect upon estates created by deed or will.

Subject to the provisions aforesaid, a freehold estate as well as a chattel real may be created by deed or will to commence at a future day, absolutely or conditionally; an estate for life may be created in a term for years and a remainder limited thereon; a remainder of freehold or for years, either vested or contingent, may be created expectant on the determination of a term for years, and a fee may be limited on a fee upon a contingency which must happen, if at all, within the period herein prescribed. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1025; 1973 Ed., § 45-104.)

**Section references.** — This section is referred to in §§ 45-223 and 45-1726.

### § 45-305. Title conveyable by anyone claiming such.

Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 513; 1973 Ed., § 45-105.)

## § 45-306. Deed or will necessary for more than one-year term or for limitation upon such.

(a) For the purposes of this section, “commercial lease” means a lease for nonresidential real property.

(b) Except as provided in subsection (c) of this section, no estate of inheritance, or for life, or for a longer term than 1 year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, in person or by power of attorney or by will.

(c) Commercial leases for a longer term than 1 year in any real property in the District of Columbia may be signed on behalf of the owner of real property by an authorized agent. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 492; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-106; June 11, 1992, D.C. Law 9-116, § 2, 39 DCR 3186; Apr. 27, 1994, D.C. Law 10-110, § 2(a), 41 DCR 1023.)

**Cross references.** — As to statute of frauds, see §§ 28-3501 and 28-3503.

**Section references.** — This section is referred to in § 45-801.

**Effect of amendments.** — D.C. Law 10-110 inserted “in person or by power of attorney” near the end of (b).

**Legislative history of Law 9-116.** — Law 9-116, the “Real Property Lease Authorization Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-129, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-190 and transmitted to both Houses of Congress for its review. D.C. Law 9-116 became effective on June 11, 1992.

**Legislative history of Law 10-110.** — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

**Applicability of section.** — Reliance on this section for the proposition that an executed or recorded deed is a prerequisite for the doctrine of equitable conversion to apply is misplaced; this section applies to legal, not equitable, title. *SMS Assocs. v. Clay*, 868 F. Supp. 337 (D.D.C. 1994), aff’d, 70 F.3d 638 (D.C. Cir. 1995).

**Several reasons may render noncompliance with statute of frauds inconsequen-**

**tial:** (1) Where the party’s own fraud is responsible for the noncompliance (equitable estoppel); (2) where the doctrine of part performance applies (promissory estoppel); and (3) where the party has admitted the contract (waiver). *Tauber v. District of Columbia*, App. D.C., 511 A.2d 23 (1986).

**Failure to acknowledge.** — A lease for rooms in an office building is a perfectly valid conveyance as between the parties to it although it was not acknowledged. *Munsey Trust Co. v. Alexander, Inc.*, 42 F.2d 604 (D.C. Cir. 1930).

**Failure to seal.** — Although a contract for lease of office rooms is not under seal, it is entitled to specific performance. *Hoffman v. F.H. Duehay, Inc.*, 65 F.2d 839 (D.C. Cir. 1933).

**A lease for less than a year need not be under seal.** *Binder v. Jaffe*, App. D.C., 101 A.2d 260 (1953).

**Lease by cotenant.** — Cotenant may validly lease entire estate for five years without the other cotenants signing the lease, giving lessee control of entire property. *Washington Ins. Agency, Inc. v. Friedlander*, App. D.C., 487 A.2d 599 (1985).

**Lease executed by rental agent.** — Where a rental agent executed a lease to owner’s property for term of more than 1 year, such lease was ineffectual beyond the 1-year period even though the agent had authority from the owner to execute it, as such a lease was an attempt by an agent to convey an owner’s interest in real estate and is prohibited by this section. *Paul v. Holloway*, App. D.C., 124 A.2d 587 (1956).

**Parol extension of lease invalid.** — An alleged parol agreement by lessor to give lessees an additional 5-year term is not enforce-

able in absence of evidence of execution of such an agreement. *Ross v. Brainerd*, App. D.C., 54 A.2d 859 (1947).

**Clerical error in designation of parties ignored.** — Where the body of a lease properly designated the corporate lessor and the individual lessee as such, the transposition in the attestation clause of words lessee and lessor in such manner as to make the clause indicate that the individual lessee was the corporation did not invalidate the lease, since the intent of the parties was perfectly apparent from the entire lease, and the transposition was a mere clerical error. *Capital Linoleum Co. v. Savage*, App. D.C., 91 A.2d 564 (1952).

**Lease where lessor has life estate.** — Where lessor has only a life estate, the rights under the lease expire with her, and the remaindermen, by accepting rent after her death, are not estopped to defend against the covenant of renewal in the lease. *Velati v. Dante*, 39 App. D.C. 372 (1912), cert. denied, 227 U.S. 679, 33 S. Ct. 462, 57 L. Ed. 700 (1913).

**Authority to file complaint for posses-**

**sion of property.** — Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file complaint for possession of property. *American Sec. Bank v. Cummings*, 120 WLR 88 (Super. Ct. 1992).

**Parties' admission of agreement held sufficient to remove lease from statute of frauds.** — See *Tauber v. District of Columbia*, App. D.C., 511 A.2d 23 (1986).

**Instrument insufficient to grant or create any estate.** — See *Schooler v. Schooler*, 173 F.2d 299 (D.C. Cir. 1948).

**Cited in** *Kresge v. Crowley*, 47 App. D.C. 13 (1917); *Wallace v. Occupant*, 115 WLR 2377 (Super. Ct. 1987); *Solon Automated Servs., Inc. v. Borger Mgt., Inc.*, 742 F. Supp. 1178 (D.D.C.), aff'd, App. D.C., 917 F.2d 62 (D.C. Cir.), 742 F. Supp. 1181 (D.D.C. 1990); *Wolf v. District of Columbia*, App. D.C., 597 A.2d 1303 (1991); *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992); *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992).

## § 45-307. Perpetuities; pensions and employee trusts excepted.

Any pension, profit-sharing, stock bonus, annuity, disability, death benefit, or other employee trusts heretofore or hereafter established by employers for the purpose of distributing the income or the principal thereof, or the principal and income thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws of the District of Columbia against perpetuities, against restraints on the power of alienation of title to property, or against accumulation of income, but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purposes for which they are established. (Aug. 25, 1959, 73 Stat. 428, Pub. L. 86-201, § 1; 1973 Ed., § 45-107.)

**Cross references.** — As to perpetuities, see § 45-302.

## CHAPTER 4. INTERPRETATION OF INSTRUMENTS.

Sec.

- 45-401. Words of inheritance unnecessary.  
 45-402. "Grant" or "bargain and sell" passes whole estate and interest.  
 45-403. Remainder to heirs of life tenant; rule in Shelley's case abolished.

Sec.

- 45-404. Posthumous children.  
 45-405. Construction of words importing want or failure of issue.

**§ 45-401. Words of inheritance unnecessary.**

No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary intention shall appear by express terms or be necessarily implied therein. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 502; 1973 Ed., § 45-201.)

**Effect of section.** — The requirement that words of art, such as "and his heirs" or "in fee simple," or any similar phrase, be used in order to create estate in fee simple has been abolished in the District of Columbia by this section which provides in effect that a conveyance or device to A without anything more grants an estate in fee simple unless the intention of the parties appears to be the contrary. Simmons v. Rosemond, 223 F. Supp. 61 (D.D.C. 1963).

**Use of term "heir".** — When the word "heir" is used in a will as one of limitation, it must be

given that effect, but the contrary is true if its use in context clearly indicates that it is intended to constitute a disposition by purchase. Greenwood v. Page, 138 F.2d 921 (D.C. Cir. 1943).

**Deeds and wills must be construed in accordance with the intention of the parties** insofar as it can be discerned from the text of the instrument. Simmons v. Rosemond, 223 F. Supp. 61 (D.D.C. 1963).

Cited in In re Estate of Glover, 463 F.2d 1238 (D.C. Cir. 1972).

**§ 45-402. "Grant" or "bargain and sell" passes whole estate and interest.**

The word "grant," and the phrase "bargain and sell," or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 503; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-202.)

**§ 45-403. Remainder to heirs of life tenant; rule in Shelley's case abolished.**

Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1027; 1973 Ed., § 45-203.)

**Section references.** — This section is referred to in § 45-223.

**Effect of section.** — The rule in Shelley's

case has been abolished in the District of Columbia by this section which provides in effect that if one grants an estate to A for life, remain-

der to his heirs, A receives a life estate and his heirs take a fee simple upon his death. *Simmons v. Rosemond*, 223 F. Supp. 61 (D.D.C. 1963).

**Application of common law.** — Where the

death of decedent occurred before the enactment of this section, the common-law rule applied. *Noyes v. Parker*, 92 F.2d 562 (D.C. Cir. 1937).

### § 45-404. Posthumous children.

Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1028; 1973 Ed., § 45-204.)

**Section references.** — This section is referred to in § 45-223.

### § 45-405. Construction of words importing want or failure of issue.

In any deed or will of real or personal estate in the District of Columbia, executed after March 3, 1901, the words "die without issue," or the words "die without leaving issue," or the words "have no issue," or other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear in the instrument. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 504; 1973 Ed., § 45-205.)

**Effective date of devise over.** — Under a devise to 1 person in fee and in case he should die underage and without issue, to another in fee, the devise over takes effect upon the death

at any time of the first devisee underage and without children. *Herrell v. Herrell*, 47 App. D.C. 30 (1917).

## CHAPTER 5. FORMS; COVENANTS AND WARRANTIES.

Sec.

- 45-501. Deed, mortgage, and lease forms.  
 45-502. Deeds of corporations; formal requisites; acknowledgment.  
 45-503. "Covenant" binds covenantor, covenantee, and their privies.  
 45-504. General warranty.  
 45-505. Special warranty.  
 45-506. Covenant of quiet enjoyment.

Sec.

- 45-507. Covenant against having encumbered land.  
 45-508. Covenant for further assurances; contracts to contain soil characteristics information.  
 45-509. Warranties void as to heirs; life tenants and certain parties not in possession.

**§ 45-501. Deed, mortgage, and lease forms.**

The following forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the said forms. Any other form conforming to the rules herein laid down shall be sufficient:

## FEE SIMPLE DEED

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that in consideration of (here insert consideration), I, the said \_\_\_\_\_, do grant unto (here insert grantees name), of \_\_\_\_\_, all that (here describe the property).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

## DEED BY HUSBAND AND WIFE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by us, \_\_\_\_\_ and \_\_\_\_\_, his wife, of \_\_\_\_\_, witnesseth, that in consideration of \_\_\_\_\_, we, the said \_\_\_\_\_ and his wife, do grant unto \_\_\_\_\_, of \_\_\_\_\_, and so forth.

Witness our hands and seals. \_\_\_\_\_ [Seal.]  
\_\_\_\_\_  
[Seal.]

## DEED OF LIFE ESTATE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that in consideration of \_\_\_\_\_, I, the said \_\_\_\_\_, do grant unto \_\_\_\_\_, of \_\_\_\_\_, all that (here describe the property), to hold during his life and no longer.

Witness my hand and seal. \_\_\_\_\_ [Seal.]

## DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that whereas (here insert the consideration for the deed), I, the said \_\_\_\_\_, do grant unto \_\_\_\_\_, of \_\_\_\_\_, as trustee, the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

## FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, trustee, of \_\_\_\_\_, witnesseth: Whereas by a decree of (here insert court) passed on the \_\_\_\_\_ day of \_\_\_\_\_, in the cause of \_\_\_\_\_ versus \_\_\_\_\_, I, the said \_\_\_\_\_, was appointed trustee to sell the land decreed to be sold, and have sold the same to \_\_\_\_\_; and said sale has been ratified by said court, and said \_\_\_\_\_ has fully paid the purchase money due on said sale; now, therefore, in consideration of the premises, I, the said \_\_\_\_\_, do grant unto \_\_\_\_\_, of \_\_\_\_\_, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

## EXECUTOR'S DEED

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, witnesseth, that I, \_\_\_\_\_, of \_\_\_\_\_, executor of the last will of \_\_\_\_\_, late of \_\_\_\_\_, deceased, under a power in said will contained, in consideration of \_\_\_\_\_, have sold and do hereby grant to \_\_\_\_\_, of \_\_\_\_\_, all that (here describe the property).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

## FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, witnesseth, that whereas I, \_\_\_\_\_, of \_\_\_\_\_, am indebted unto \_\_\_\_\_, of \_\_\_\_\_, in the sum of \_\_\_\_\_, payable \_\_\_\_\_, for which I have given to said \_\_\_\_\_ my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said \_\_\_\_\_ all that (here describe property), provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said \_\_\_\_\_ is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal. \_\_\_\_\_ [Seal.]

## FORM OF LEASE

This lease, made this \_\_\_\_\_ of \_\_\_\_\_, in the year \_\_\_\_\_, between \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that the said \_\_\_\_\_ doth lease unto the said \_\_\_\_\_, his executor, administrator, and assigns, all that (here describe the property) for the term of \_\_\_\_\_ years, beginning on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, the said \_\_\_\_\_ paying therefor the sum of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year (or month, as the case may be).

Witness our hands and seals. \_\_\_\_\_ [Seal.]

\_\_\_\_\_ [Seal.]

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, ch. 16, subch. 5; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 45-301.)

**Cross references.** — As to sales and conveyances of public property, see §§ 1-303 and 9-401 et seq.

As to release of dower, see § 19-107a.

**Cited** in Young v. Ridley, 309 F. Supp. 1308 (D.D.C. 1970); Bryant v. Jefferson Fed. Sav. &

Loan Ass'n, 509 F.2d 511 (D.C. Cir. 1974); Simpson v. Jack Spicer Real Estate, Inc., App. D.C., 396 A.2d 212 (1978); Wallace v. Occupant, 115 WLR 2377 (Super. Ct. 1987).

## § 45-502. Deeds of corporations; formal requisites; acknowledgment.

The deed of a corporation shall be executed and acknowledged either (1) by an attorney-in-fact appointed for that purpose or (2) without appointment, by its president or a vice-president if also attested by the secretary or assistant secretary of the corporation. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 497; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-302; Apr. 27, 1994, D.C. Law 10-110, § 2(c), 41 DCR 1023.)

**Section references.** — This section is referred to in §§ 45-801 and 45-801.3.

**Effect of amendments.** — D.C. Law 10-110 rewrote this section.

**Legislative history of Law 10-110.** — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

**Unacknowledged lease held valid.** — A lease containing the seal of the corporation and signed by its vice president was held valid even though it was not acknowledged. Munsey Trust Co. v. Alexander, Inc., 42 F.2d 604 (D.C. Cir. 1930).

**Deed held valid.** — Deed of corporation, signed by vice president with power of attorney to act for the corporation, held valid. Eggleston v. Wayland, 10 F.2d 642 (D.C. Cir. 1925).

**Cited** in Clay Properties, Inc. v. Washington Post Co., App. D.C., 604 A.2d 890 (1992).

## § 45-503. “Covenant” binds covenantor, covenantee, and their privies.

When, in any deed, the word “covenant” is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 505; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-303.)

**Covenants inure to benefit of purchasers and subsequent owners.** — Similar restrictive covenants contained in deeds from the owner of a subdivision to all purchasers inure

to the benefit of the several purchasers and subsequent owners thereof. McNeil v. Gary, 40 App. D.C. 397 (1913).

## § 45-504. General warranty.

A covenant by the grantor, in a deed conveying real estate, “that he will warrant generally the property hereby conveyed,” or a grant of real estate in

which the granting words are followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 506; 1973 Ed., § 45-304.)

### § 45-505. Special warranty.

A covenant by a grantor in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 507; 1973 Ed., § 45-305.)

**Covenants in trust deeds.** — Where the grantor executing trust deeds creating junior liens warranted the property against persons claiming through her and covenanted to execute any necessary further assurances, the effect of the covenants was limited by their terms and by the fact that the grantor possessed and intended to convey only an equity of redemp-

tion from prior trusts. *Thompson v. Lawson*, 132 F.2d 21 (D.C. Cir. 1942), cert. denied, 319 U.S. 759, 63 S. Ct. 1177, 87 L. Ed. 1711 (1943).

**Waiver of breach of covenant.** — A lessor may waive the breach of a specific covenant by delay in enforcement or by subsequent acceptance of rent. *Klein v. Longo*, App. D.C., 34 A.2d 359 (1943).

### § 45-506. Covenant of quiet enjoyment.

A covenant by the grantor in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times after March 3, 1901, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 508; 1973 Ed., § 45-306.)

**Implied warranty of quiet possession in lease.** — Where a landowner, as lessor, entered into a lease for restaurant purposes, he impliedly warranted title and quiet possession, and, in such circumstances, it was not incumbent upon the lessee to search the lessor's title

to determine if there was a covenant in the lessor's deed against commercial use, and the lessee was entitled to rely upon the warranty. *Schwartz v. Westbrook*, 154 F.2d 854 (D.C. Cir. 1946).

### § 45-507. Covenant against having encumbered land.

A covenant by a grantor, in a deed of land, "that he has done no act to encumber said land," shall be construed to have the same effect as if he had

covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected or encumbered in title, estate, or otherwise. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 509; 1973 Ed., § 45-307.)

### § 45-508. Covenant for further assurances; contracts to contain soil characteristics information.

(a) A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

(b) All contracts drawn for the purpose of conveying real property in the District of Columbia shall contain the following information:

(1) The characteristic of the soil on the property in question as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 and as shown on the Soil Maps of the District of Columbia at the back of that publication; and

(2) A notation that for further information the buyer can contact a soil testing laboratory, the District of Columbia Department of Environmental Services or the Soil Conservation Service of the Department of Agriculture. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 510; 1973 Ed., § 45-308; Sept. 28, 1977, D.C. Law 2-23, § 3, 24 DCR 3342.)

**Section references.** — This section is referred to in § 1-2807.

**Legislative history of Law 2-23.** — Law 2-23, the "Soil Erosion and Sedimentation Control Act of 1977," was introduced in Council and assigned Bill No. 2-81, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on May 31, 1977 and June

14, 1977, respectively. Signed by the Mayor on July 11, 1977, it was assigned Act No. 2-54 and transmitted to both Houses of Congress for its review.

**Transfer of functions.** — The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

### § 45-509. Warranties void as to heirs; life tenants and certain parties not in possession.

All warranties which shall be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect, and likewise all collateral warranties, of any lands, tenements or hereditaments, by any

ancestor, who has no estate of inheritance in possession in the same shall be void against the heir. (4 Anne, ch. 16, § 21, 1705; Kilty Rep., 246; Alex. Br. Stat. 662; Comp. Stat., D.C., 496, § 33; 1973 Ed., § 45-309.)

## CHAPTER 6. EXECUTIONS, ACKNOWLEDGMENTS, AND REVOCATIONS.

### *Subchapter I. General Provisions.*

Sec.

- 45-601. No acknowledgment of deed by attorney.
- 45-602 to 45-604. [Repealed].
- 45-605. Acknowledgments in Guam, Samoa, and Canal Zone.
- 45-606. Acknowledgments in Philippine Islands and Puerto Rico.
- 45-607. [Repealed].
- 45-608 to 45-612. [Repealed].

### *Subchapter II. Uniform Law on Notarial Acts*

Sec.

- 45-621. Definitions.
- 45-622. Notarial acts.
- 45-623. Notarial acts in the District.
- 45-624. Notarial acts in other jurisdictions of the United States.
- 45-625. Notarial acts under federal authority.
- 45-626. Foreign notarial acts.
- 45-627. Certificate of notarial acts.
- 45-628. Short forms.

### *Subchapter I. General Provisions.*

## **§ 45-601. No acknowledgment of deed by attorney.**

(a) A general or specific power of attorney executed by a person authorizing an attorney-in-fact to sell, grant, or release any interest in real property shall be executed in the same manner as a deed and shall be recorded with or prior to the deed executed pursuant to the power of attorney. If the power of attorney is recorded prior to the deed executed pursuant to the power of attorney, the deed being executed pursuant to the power of attorney shall include a recording date and instrument number reference of where the original recorded power of attorney is located in the Office of the Recorder of Deeds for the District of Columbia. All powers of attorney executed in accordance with this section shall contain on the top of the front page, in bold and capital letters, the following words:

**“THIS POWER OF ATTORNEY AUTHORIZES THE PERSON NAMED BELOW AS MY ATTORNEY-IN-FACT TO DO ONE OR MORE OF THE FOLLOWING: TO SELL, LEASE, GRANT, ENCUMBER, RELEASE, OR OTHERWISE CONVEY ANY INTEREST IN MY REAL PROPERTY AND TO EXECUTE DEEDS AND ALL OTHER INSTRUMENTS ON MY BEHALF, UNLESS THIS POWER OF ATTORNEY IS OTHERWISE LIMITED HEREIN TO SPECIFIC REAL PROPERTY.”**

(b) A person with a general or specific power of attorney executing a deed for another shall sign and acknowledge the deed as attorney-in-fact.

(c) A power of attorney is deemed to be revoked when the instrument containing the revocation is recorded in the Office of the Recorder of Deeds for the District of Columbia. A person revoking a power of attorney shall sign and acknowledge the instrument containing the revocation. Notwithstanding the above, any attorney-in-fact receiving written notice of the revocation by the party who granted the power of attorney shall cease from any further action as attorney-in-fact on behalf of the party who granted the power of attorney. The instrument of revocation should reference the recording date and instrument number of the original power of attorney. A person granting a power of attorney may revoke the power to convey real property without affecting any other

powers contained in the original power of attorney by reciting in the revocation that the revocation of the power to convey real property shall not affect the remaining powers granted in the original power of attorney. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 498; 1973 Ed., § 45-401; Apr. 27, 1994, D.C. Law 10-110, § 2(b), 41 DCR 1023.)

**Section references.** — This section is referred to in §§ 45-801 and 45-801.3.

**Effect of amendments.** — D.C. Law 10-110 rewrote this section.

**Legislative history of Law 10-110.** — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

**This section applies only to deeds of conveyance** and not to contracts to convey

which are subject to the statute of frauds, which limits the enforceability of certain agreements to those signed by the party to be charged or by a person authorized by the party to be charged. *Gustin v. Stegall*, App. D.C., 347 A.2d 917 (1975), cert. denied, 425 U.S. 974, 96 S. Ct. 2174, 48 L. Ed. 2d 798 (1976).

**Lease held valid notwithstanding effect of section.** — A lease for more than 1 year will be valid when the tenant enters into possession and expends large sums of money, notwithstanding the invalidity of the lease under the provision of this section that no deed may be executed by attorney. *Kresge v. Crowley*, 47 App. D.C. 13 (1917).

Cited in *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

## §§ 45-602 to 45-604. Manner of acknowledgment; form of certificate; acknowledgment out of District; acknowledgment in foreign country.

Repealed. Mar. 6, 1991, D.C. Law 8-205, § 12(a), 37 DCR 8444.

**Legislative history of Law 8-205.** — See note to § 45-621.

## § 45-605. Acknowledgments in Guam, Samoa, and Canal Zone.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public; provided, that the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. (June 28, 1906, 34 Stat. 552, ch. 3585; 1973 Ed., § 45-405.)

**§ 45-606. Acknowledgments in Philippine Islands and Puerto Rico.**

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the Philippine Islands and Puerto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public; provided, that the certificate by such notary in the Philippine Islands or in Puerto Rico, as the case may be, shall be accompanied by the certificate of the Executive Secretary of Puerto Rico, or the Governor or Attorney General of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be. (Mar. 22, 1902, 32 Stat. 88, ch. 273; Mar. 2, 1917, 39 Stat. 968, ch. 145, § 54; May 17, 1932, 47 Stat. 158, ch. 190; 1973 Ed., § 45-406.)

**§ 45-607. Certain defective acknowledgments prior to March 3, 1879, validated.**

Repealed. Apr. 21, 1994, D.C. Law 10-110, § 4, 41 DCR 1023.

**Legislative history of Law 10-110.** — See note to § 45-601.

**§§ 45-608 to 45-612. Certain defective deeds and acknowledgments prior to January 1, 1969, validated; acknowledgments by married women — prior to April 10, 1869; same — when validates defective power of attorney; validation of deeds made without acknowledgment prior to January 1, 1902; Acts of Congress and Acts of Maryland cumulative as to deeds prior to January 1, 1902.**

Repealed. Apr. 27, 1994, D.C. Law 10-110, §§ 2(h)-(l), 41 DCR 1023.

**Legislative history of Law 10-110.** — See note to § 45-601.

*Subchapter II. Uniform Law on Notarial Acts.*

**§ 45-621. Definitions.**

For the purposes of this subchapter, the term:

(1) "Acknowledgment" means a declaration by a person that states:

(A) The person has executed an instrument for the purposes stated in the instrument; and

(B) If the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed the instru-

ment as the act of the person or entity represented and identified in the instrument.

(2) "District" means the District of Columbia.

(3) "In a representative capacity" means to act as:

(A) An authorized officer, agent, partner, trustee, or other representative for and on behalf of a corporation, partnership, trust, or other entity;

(B) A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(C) An attorney in fact for a principal; or

(D) An authorized representative of another in any other capacity.

(4) "Notarial act" means taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, noting a protest of a negotiable instrument, or any other similar act authorized by law.

(5) "Notarial officer" means a notary public or other officer authorized to perform a notarial act.

(6) "Verification upon oath or affirmation" means a declaration that a statement made by a person upon oath or affirmation is a true statement. (Mar. 6, 1991, D.C. Law 8-205, § 2, 37 DCR 8444.)

**Legislative history of Law 8-205.** — Law 8-205, the "Uniform Law on Notarial Acts of 1990," was introduced in Council and assigned Bill No. 8-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-280 and transmitted to both Houses of Congress for its review.

**Application of Law 8-205.** — Section 10 of D.C. Law 8-205 provided that the act shall apply to any notarial act performed on or after the effective date of this act.

**Construction of Law 8-205.** — Section 11 of D.C. Law 8-205 provided that the act shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of the act among jurisdictions enacting it.

## § 45-622. Notarial acts.

(a) In taking an acknowledgment, the notarial officer shall determine from personal knowledge or satisfactory evidence that the person who appears before the officer and makes the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer shall determine from personal knowledge or satisfactory evidence that the person who appears before the officer and makes the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notarial officer shall determine from personal knowledge or satisfactory evidence that the signature is the signature of the person who appears before the officer and is named in the instrument.

(d) A notarial officer shall have satisfactory evidence that a person is the person whose true signature is on a document if the person is:

(1) Personally known to the notarial officer;

(2) Identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(3) Identified on the basis of identification documents. (Mar. 6, 1991, D.C. Law 8-205, § 3, 37 DCR 8444.)

**Section references.** — This section is referred to in § 45-627.

**Legislative history of Law 8-205.** — See note to § 45-621.

### **§ 45-623. Notarial acts in the District.**

(a) A notarial act may be performed within the District by the following persons to the extent authorized by law:

- (1) A notary public of the District;
- (2) A judge, clerk, or deputy clerk of any court of the District; or
- (3) Any other person authorized to perform the specific act.

(b) Notarial acts performed within the District under federal authority as provided in § 45-625 shall have the same effect as if performed by a notarial officer of the District.

(c) The signature and title of a person performing a notarial act are *prima facie* evidence that the signature is genuine and that the person holds the designated title. (Mar. 6, 1991, D.C. Law 8-205, § 4, 37 DCR 8444.)

**Legislative history of Law 8-205.** — See note to § 45-621.

### **§ 45-624. Notarial acts in other jurisdictions of the United States.**

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District, if the notarial act is performed in another state, commonwealth, territory, district, or possession of the United States by:

- (1) A notary public of the jurisdiction;
- (2) A judge, clerk, or deputy clerk of a court of the jurisdiction; or
- (3) Any other person authorized by the law of the jurisdiction to perform a notarial act.

(b) A notarial act performed in any other jurisdiction of the United States under federal authority as provided in § 45-625 shall have the same effect as if performed by a notarial officer of the District.

(c) The signature and title of a person who performs a notarial act in another jurisdiction are *prima facie* evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in subsection (a)(1) or (2) of this section shall establish conclusively the authority of a holder of that title to perform a notarial act. (Mar. 6, 1991, D.C. Law 8-205, § 5, 37 DCR 8444.)

**Legislative history of Law 8-205.** — See note to § 45-621.

**§ 45-625. Notarial acts under federal authority.**

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District if the notarial act is performed anywhere under authority granted by the law of the United States by:

(1) A judge, clerk, or deputy clerk of a court;

(2) A commissioned officer on active duty in the military service of the United States as provided in 10 U.S.C. § 936;

(3) An officer of the foreign service or consular officer of the United States as provided in §§ 3 and 7 of An Act To provide for the reorganization of the consular service of the United States, approved April 5, 1906 (34 Stat. 101; 22 U.S.C. § 4215 *passim*); or

(4) Any other person authorized by federal law to perform a notarial act.

(b) The signature and title of a person who performs a notarial act under federal authority are *prima facie* evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in subsection (a)(1), (2), or (3) of this section shall establish conclusively the authority of a holder of that title to perform a notarial act. (Mar. 6, 1991, D.C. Law 8-205, § 6, 37 DCR 8444.)

**Section references.** — This section is referred to in §§ 45-623 and 45-624.

**Legislative history of Law 8-205.** — See note to § 45-621.

**§ 45-626. Foreign notarial acts.**

(a) A notarial act shall have the same effect under the law of the District as if the notarial act had been performed by a notarial officer of the District if the notarial act is performed within the jurisdiction of and under authority of a foreign country or its constituent units or a multi-national or international organization by:

(1) A notary public or notary;

(2) A judge, clerk, or deputy clerk of a court of record; or

(3) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An "Apostille" in the form prescribed by the Convention Abolishing the Requirement of Legalization for Foreign Documents done at the Hague on October 5, 1961 (T.I.A.S. 10073; 527 U.N.T.S. 189), shall conclusively establish that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the country under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of a country who is stationed in the United States, shall establish conclusively any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person who performs the notarial act shall be *prima facie* evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in subsection (a)(1) or (2) of this section shall be *prima facie* evidence that a person with the indicated title has the authority to perform a notarial act.

(f) If the title of office and indication of authority to perform a notarial act appears in a digest of foreign law or in a list customarily used as a source for information for foreign law, the authority of an officer with the title to perform a notarial act shall be established conclusively.

(g) For purposes of this section, the term “multi-national or international organization” means an organization defined in 22 U.S.C. § 288. (Mar. 6, 1991, D.C. Law 8-205, § 7, 37 DCR 8444; Feb. 5, 1994, D.C. Law 10-68, § 36, 40 DCR 6311.)

**Effect of amendments.** — D.C. Law 10-68, in (f), substituted “a digest” for “the digest” and, in (g), substituted “22 U.S.C. § 288” for “22 U.S.C. § 188.”

**Legislative history of Law 8-205.** — See note to § 45-621.

**Legislative history of Law 10-68.** — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill

No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

## § 45-627. Certificate of notarial acts.

(a) A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and shall include the official stamp or seal of office. If the officer is a notary public, the certificate shall indicate the expiration date, if any, of the commission of office. Omission of the expiration date information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, as provided in 10 U.S.C. § 936, the certificate shall include the officer’s rank and title of office.

(b) A certificate of a notarial act shall be sufficient if the certificate meets the requirements of subsection (a) of this section and:

(1) Is in the short form set forth in § 45-628;

(2) Is in a form otherwise prescribed by the law of the District;

(3) Is in a form prescribed by a law or regulation applicable in the place where the notarial act was performed; or

(4) Sets forth the actions of the notarial officer and those actions that are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by § 45-622. (Mar. 6, 1991, D.C. Law 8-205, § 8, 37 DCR 8444; July 13, 1991, D.C. Law 9-9, § 2(a), 38 DCR 3370; Dec. 10, 1991, D.C. Law 9-52, § 2(a), 38 DCR 6585.)

**Section references.** — This section is referred to in § 45-628.

**Legislative history of Law 8-205.** — See note to § 45-621.

**Legislative history of Law 9-9.** — Law 9-9, the “Uniform Law on Notarial Acts Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-173. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-27 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-52.** — Law

9-52, the “Uniform Law on Notarial Acts Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-214, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 2, 1991, and October 1, 1991, respectively. Signed by the Mayor on October 23, 1991, it was assigned Act No. 9-94 and transmitted to both Houses of Congress for its review.

**Application of Law 9-52.** — Section 3 of D.C. Law 9-52 provided that the act shall apply as of Mar. 6, 1991.

## § 45-628. Short forms.

The following short form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by § 45-627(a).

(1) For an acknowledgment in an individual capacity:

District of Columbia

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

---

(Signature of notarial officer)

(Seal, if any)

---

Title (and Rank)

(My commission expires: \_\_\_\_\_)

(2) For an acknowledgment in a representative capacity:

District of Columbia

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

---

(Signature of notarial officer)

(Seal, if any)

---

Title (and Rank)

(My commission expires: \_\_\_\_\_)

(3) For a verification upon oath or affirmation:

District of Columbia

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

---

(Signature of notarial officer)

(Seal, if any)

---

Title (and Rank)  
(My commission expires: \_\_\_\_\_)

(4) For witnessing or attesting a signature:

District of Columbia

Signed or attested before me on (date) by (name(s) of person(s)).

---

(Signature of notarial officer)

(Seal, if any)

---

Title (and Rank)  
(My commission expires: \_\_\_\_\_)

(5) Repealed. (Mar. 6, 1991, D.C. Law 8-205, § 9, 37 DCR 8444; July 13, 1991, D.C. Law 9-9, § 2(b), 38 DCR 3370; Dec. 10, 1991, D.C. Law 9-52, § 2(b), 38 DCR 6585.)

**Section references.** — This section is referred to in § 45-627.

**Legislative history of Law 8-205.** — See note to § 45-621.

**Legislative history of Law 9-9.** — See note to § 45-627.

**Legislative history of Law 9-52.** — See note to § 45-627.

**Application of Law 9-52.** — Section 3 of D.C. Law 9-52 provided that the act shall apply as of Mar. 6, 1991.

## CHAPTER 7. MORTGAGES AND DEEDS OF TRUST.

Sec.

- 45-701. Execution, acknowledgment, and recordation in same manner as deeds.  
 45-702. Duty of Recorder.  
 45-703. Estate of mortgagee or trustee; conveyance thereof.  
 45-704. Survival of mortgagee's or trustee's title.  
 45-705. While action pending, money due payable to mortgagee or court; effect thereof.  
 45-706. Decree or order without hearing where defendant files request and plaintiff files admission.  
 45-707. Limitations upon right of redemption in §§ 45-705 and 45-706.  
 45-708. Conveyance or assurance by infant following court order.  
 45-709. Conveyance or assurance by infant trustee or mortgagee under court order.  
 45-710. Mortgagee may redeem prior mortgage; prior mortgage may not bar.  
 45-711. Appointment of trustee in event of death of mortgagee or trustee; procedure; summary decree.  
 45-712. Equity practice followed where answer

Sec.

- sets up defense against foreclosure.  
 45-713. Replacement of deceased, appointed trustee.  
 45-714. Petition for new trustee; causes; procedure; written agreement of parties.  
 45-715. Application to court to fix terms and determine notice of sale; notice under power of sale provision.  
 45-715.1. Right to cure residential mortgage foreclosure default.  
 45-716. Sale of property — Deficiency judgments; limitations thereon; relief in suit to enforce vendor's lien.  
 45-717. Same — Amount creditor to pay if purchaser.  
 45-718. Commission to mortgagee or trustee; rates; when advertised sale not held.  
 45-719. Petition for deed of release after death of mortgagee or trustee; procedure; summary determination.  
 45-720. Conveyance and assurance by and for mentally handicapped following court order.

**§ 45-701. Execution, acknowledgment, and recordation in same manner as deeds.**

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329; 1973 Ed., § 45-601.)

**Cross references.** — As to statute of frauds, see §§ 28-3501 and 28-3503.

**Constructive trust.** — Where the vendor conveyed property and the purchaser recorded the deed but did not prepare and record the trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by the vendor, the vendor's constructive trust would have priority over judgment creditors, but if the creditors were able to show affirmative reliance on the state of record, without notice of any infirmity, they would be entitled to the same stand-

ing as bona fide purchasers. *Osin v. Johnson*, 243 F.2d 653 (D.C. Cir. 1957).

**Bankruptcy trustee has standing to attack validity of deeds of trust.** — The trustee in reorganization for corporations under Chapter X of the Federal Bankruptcy Act has standing to attack the validity of deeds of trust held by claimants. *In re Parkwood, Inc.*, 461 F.2d 158 (D.C. Cir. 1971).

**Cited** in *Dulany v. Morse*, 39 App. D.C. 523 (1913); *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, App. D.C., 548 A.2d 87 (1988); *Harris v. Maryland Nat'l Bank*, 183 Bankr. 657 (D.D.C. 1995).

## § 45-702. Duty of Recorder.

It shall be the duty of the Recorder of Deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329; 1973 Ed., § 45-602.)

## § 45-703. Estate of mortgagee or trustee; conveyance thereof.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by agreement of the parties pursuant to § 45-714(b) or by judicial decree for the causes hereinafter mentioned; provided, that nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee simple under a deed made by the mortgagee, trustee, or new trustee in pursuance of the powers conferred by the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(a); 1973 Ed., § 45-603.)

**Cross references.** — As to removal of trustee, see § 45-714.

**Section not violative of due process.** — The claim that homeowners are deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty, to foreclose and sell property by public auction without a hearing for the homeowner prior to the sale is insubstantial. *Young v. Ridley*, 309 F. Supp. 1308 (D.D.C. 1970).

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate the due process clause of the Fifth Amendment because they recognize the right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential pre-foreclosure rights. *Bryant v. Jefferson Fed. Sav. & Loan Ass'n*, 509 F.2d 511 (D.C. Cir. 1974).

**Veterans' Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment.** — The fact that a loan is secured under a program administered by the Veterans' Administration is not sufficient to bring nonjudicial foreclosure and sale within the Fifth Amendment, because the primary transaction is between private parties and the V.A.'s participation and importance is minimal. *Simpson v. Jack Spicer Real Estate, Inc.*, App. D.C., 396 A.2d 212 (1978).

**The estate of the trustee is a naked legal title** without any beneficial interest whatever.

The legal title is always held in strict subordination to the beneficial interest of the debtor and creditor in the transaction. *Marshall v. Kraak*, 23 App. D.C. 129 (1904).

Trustee holds the legal title and a deed by it conveys whatever title it has. *Chesapeake Beach Ry. v. Washington, P. & C.R.R.*, 199 U.S. 247, 26 S. Ct. 25, 50 L. Ed. 175 (1905).

**Duty of trustee under trust to secure a loan** which is enforceable upon stipulated terms to conduct the sale in the manner and upon the notice prescribed in the trust. *Smith v. Jackson*, 48 App. D.C. 565 (1919), rev'd on other grounds, 254 U.S. 586, 41 S. Ct. 200, 65 L. Ed. 418 (1921).

**Personal interest of trustee.** — In making a sale, the trustee must not place himself in a position where his personal interest conflicts with his duty. *Jackson v. Smith*, 254 U.S. 586, 41 S. Ct. 200, 65 L. Ed. 418 (1921).

The exercise of a power of sale under a deed of trust by a trustee who is, or who is associated with, the owner of the debt secured, is improper. *Canelacos v. Hollway*, 123 F.2d 934 (D.C. Cir. 1941).

A fair sale under a deed of trust to an innocent purchaser for value should not be set aside because of a trustee's interest in the debt which has been disclosed to the debtor, since under such circumstances there is no good reason for disappointing the reasonable expectations of the purchaser. *Canelacos v. Hollway*, 123 F.2d 934 (D.C. Cir. 1941).

Trustees, under deeds of trust, who are also

officers and controlling stockholders of the lender, do not violate their fiduciary duties by instituting foreclosure proceedings after borrowers' defaults and after exercise of a valid acceleration of indebtedness clause, in the absence of neglect of duty or misconduct by the trustees. Johnson v. Inter-City Mtg. Corp., App. D.C., 366 A.2d 435 (1976).

**Sale by substituted trustee.** — A sale by a trustee substituted for the survivor of 2 trustees, who refused to act, is valid, without there being a substitute for the deceased trustee. Stokes v. Hinden, 85 F.2d 200 (D.C. Cir. 1936).

Cited in Pearson v. Small, 82 F.2d 849 (D.C. Cir. 1936).

## § 45-704. Survival of mortgagee's or trustee's title.

Whenever a mortgage or deed of trust to secure a debt is executed to 2 or more mortgagees or trustees in fee simple, upon the death of any 1 or more of them the legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533; 1973 Ed., § 45-604.)

Cited in Stokes v. Hinden, 85 F.2d 200 (D.C. Cir. 1936).

## § 45-705. While action pending, money due payable to mortgagee or court; effect thereof.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged

lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint. (7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D.C., p. 395, § 1; 1973 Ed., § 45-605.)

**Section references.** — This section is referred to in § 45-707.

### **§ 45-706. Decree or order without hearing where defendant files request and plaintiff files admission.**

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgages, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit. (7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat., D.C., p. 396, § 2; 1973 Ed., § 45-606.)

**Section references.** — This section is referred to in § 45-707.

### **§ 45-707. Limitations upon right of redemption in §§ 45-705 and 45-706.**

Sections 45-705 and 45-706 or anything therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other

side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer. (7 Geo. 2, ch. 20, § 3, 1734; Kilty's Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D.C., p. 397, § 3; 1973 Ed., § 45-607.)

### § 45-708. Conveyance or assurance by infant following court order.

It shall and may be lawful to and for any person or persons, under the age of 18, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infant or infants were, at the time of making such conveyance, or assurance, of the full age of 18. (7 Anne, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp. Stat., D.C., p. 79, § 13; 1973 Ed., § 45-608; July 22, 1976, D.C. Law 1-75, § 4(i), 23 DCR 1181.)

**Legislative history of Law 1-75.** — Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

### § 45-709. Conveyance or assurance by infant trustee or mortgagee under court order.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust, estates, or mortgages. (7 Anne, ch. 19, § 2, 1708; Kilty's Rep. 247; Alex. Br. Stat. 680; Comp. Stat., D.C., p. 79, § 14; 1973 Ed., § 45-609.)

**§ 45-710. Mortgagee may redeem prior mortgage; prior mortgage may not bar.**

If it so happen there be more than 1 mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; anything therein contained to the contrary thereof in anywise notwithstanding. (4 & 5 W. & M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D.C. 237, § 26; 1973 Ed., § 45-610.)

**§ 45-711. Appointment of trustee in event of death of mortgagee or trustee; procedure; summary decree.**

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the court having probate jurisdiction, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 45-714(b) and the execution of the trusts of said deed of trust by such new trustee. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(b); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(1); 1973 Ed., § 45-611.)

**Section references.** — This section is referred to in §§ 45-713 and 45-714.

**Powers of new trustees.** — Where trustees appointed under a deed of trust died, the new trustees appointed to execute the trusts are invested with all the powers which had been conveyed to the deceased trustees. Dawson v. Taylor, 4 F.2d 430 (D.C. Cir. 1925).

**Trustees' refusal or disability to perform the trust** is the equivalent in equity of a renunciation of the legal estate. Marshall v. Kraak, 23 App. D.C. 129 (1904).

**This section does not contain a provision requiring notice**, actual or constructive, to all parties in interest. Totten v. Harlowe, 88 F.2d 755 (D.C. Cir. 1936).

**Publication need not be had upon an absconding trustee.** Marshall v. Kraak, 23 App. D.C. 129 (1904).

**Cited** in Mergardt v. Colonial-American Nat'l Bank, 140 F.2d 701 (D.C. Cir. 1944).

## § 45-712. Equity practice followed where answer sets up defense against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535; 1973 Ed., § 45-612.)

## § 45-713. Replacement of deceased, appointed trustee.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in § 45-711 may be had to appoint a successor to him in the said trusts. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536; 1973 Ed., § 45-613.)

**Trustee substituted only for surviving trustee.** — The wording indicates no intention that a trustee should be substituted for each of

the original trustees, where there are more than 1, but only for the surviving trustee. Stokes v. Hinden, 85 F.2d 200 (D.C. Cir. 1936).

## § 45-714. Petition for new trustee; causes; procedure; written agreement of parties.

(a) In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in §§ 45-711 and 45-719 of this title; provided, that any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections.

(b) Notwithstanding the provisions of subsection (a) of this section, and notwithstanding any provision in a deed of trust to the contrary, whenever the grantors named in, and the persons secured by, the deed of trust (or their successors in interest) so desire, they may by written agreement executed and acknowledged in the same manner as an absolute deed substitute any trustee named in the deed of trust with a new trustee. No written instrument entered

into pursuant to this subsection shall be effective as to any person not having actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the parties agreeing to the appointment of the new trustee shall be recorded among the land records in the Office of the Recorder of Deeds. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(d); 1973 Ed., § 45-614.)

**Section references.** — This section is referred to in §§ 45-703, 45-711, and 45-719.

**Court's discretion to appoint new trustee.** — Where the deed of trust named the first and second successor trustees, 1 of whom was in jail and the other awaiting trial, the court could in its reasonable discretion appoint a new trustee. *Wright v. Pitts*, 66 F.2d 197 (D.C. Cir. 1933).

**Conclusiveness of order appointing substitute trustee.** — See *Bowen v. Mount Vernon Sav. Bank*, 85 F.2d 396 (D.C. Cir. 1936).

**Cited in** *Totten v. Harlowe*, 88 F.2d 755 (D.C. Cir. 1936); *Mergardt v. Colonial-American Nat'l Bank*, 140 F.2d 701 (D.C. Cir. 1944).

## § 45-715. Application to court to fix terms and determine notice of sale; notice under power of sale provision.

(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust, mortgage or security instrument at his last known address, with a copy of said notice being sent to the Mayor of the District of Columbia, or his designated agent, at least 30 days in advance of the date of said sale. Said notice shall be in such format and contain such information as the Council of the District of Columbia shall by regulation prescribe. The 30-day period shall commence to run on the date of receipt of such notice by the Mayor. The Mayor or his agent shall give written acknowledgment to the holder of said note, or its agent, on the day that he receives such notice, that such notice has been received, indicating therein the date of receipt of such notice. The notice required by this subsection in regard to said mortgages and deeds of trust shall be in addition to the notice described by subsection (a) of this section. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329; Oct. 12, 1968, 82 Stat. 1002, Pub. L. 90-566, § 1; 1973 Ed., § 45-615.)

**Cross references.** — As to service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

As to right to cure residential mortgage foreclosure default, see § 45-715.1.

**Section references.** — This section is referred to in § 45-715.1.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Delegation of functions.** — Organization Order No. 101, Part IV-J, designated the Office of the Recorder of Deeds as the office of record for the receipt, filing, indexing, mailing and handling of notice of foreclosure sale received pursuant to subsection (b) of this section.

**Purpose.** — A key purpose of subsection (b) is to ensure, whenever possible, that the owner of the encumbered property has notice of the sale "at least 30 days in advance of the date of said sale." *Independence Fed. Sav. Bank v. Huntley*, App. D.C., 573 A.2d 787, cert. denied, 498 U.S. 853, 111 S. Ct. 148, 112 L. Ed. 2d 114 (1990).

**Section not violative of due process.** — The claim that homeowners are deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust, and other contracts conveying title to realty, to foreclose and sell property by public auction without a hearing for the homeowner prior to sale is insubstantial, since this section provides that no such foreclosure sale may take place unless the holder of the note secured by the mortgage is given notice 30 days in advance of sale. *Young v. Ridley*, 309 F. Supp. 1308 (D.D.C. 1970).

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate the due process clause of the Fifth Amendment because they recognize the right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential pre-foreclosure rights. *Bryant v. Jefferson Fed. Sav. & Loan Ass'n*, 509 F.2d 511 (D.C. Cir. 1974).

**Veterans' Administration involvement insufficient to bring nonjudicial foreclosure within Fifth Amendment.** — The fact that a loan is secured under a program administered by the Veterans' Administration is not sufficient to bring nonjudicial foreclosure and sale within the Fifth Amendment, because the

primary transaction is between private parties and the V.A.'s participation and importance is minimal. *Simpson v. Jack Spicer Real Estate, Inc.*, App. D.C., 396 A.2d 212 (1978).

**Construction.** — This statute must be construed in favor of the homeowner. *Bank-Fund Staff Fed. Credit Union v. Cuellar*, App. D.C., 639 A.2d 561 (1994).

**Trustees of deeds of trust have only those powers and duties imposed by the trust instrument itself,** coupled with the applicable statute governing foreclosure sales. *Perry v. Virginia Mtg. & Inv. Co.*, App. D.C., 412 A.2d 1194 (1980).

**Notice not required from both noteholder and trustees.** — The requirement that notice of the foreclosure sale under a deed of trust be given to the owner does not require that both the noteholder and the trustees give notice to the owner. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

Trustees under a deed of trust are entitled to rely upon the secured parties' notice of foreclosure to the owner of the property. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

**Nor is telephone notice.** — Neither the noteholder nor the trustees under a deed of trust are required to give notice of the foreclosure sale to the owner by telephone. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

**Nor is notice of consequences and options upon default.** — Beyond the requirements of this section, it would be superfluous for a court to require the trustees to assure themselves that the defaulting party is aware of the consequences and options upon default. *Perry v. Virginia Mtg. & Inv. Co.*, App. D.C., 412 A.2d 1194 (1980).

**Nor is notice to junior lienor.** — The trustees under a first deed of trust are not required, in addition to publishing notice of foreclosure in a newspaper, to give personal notice of the foreclosure sale to the holder of the second lien, especially where the second lienor had not given the trustees notice that it wished to receive notice of any foreclosure sale. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

**Defect in notice not cured.** — Where bank failed to give notice by certified mail return receipt requested, as required by subsection (b), defect in notice was not cured by the knowledge of the borrowers of the pending sale gained 16 days prior to sale by reading of it in a newspaper, and borrower's presence at the sale. *Independence Fed. Sav. Bank v. Huntley*, App. D.C., 573 A.2d 787, cert. denied, 498 U.S. 853, 111 S. Ct. 148, 112 L. Ed. 2d 114 (1990).

**Notice of original sale insufficient for rescheduled sale.** — Notice of originally

scheduled foreclosure sale was inadequate to meet the statutory notice requirement for the subsequently rescheduled sale where the original sale had been canceled; a new notice had to be given before the property could be sold. *Capital City Corp. v. Johnson*, App. D.C., 646 A.2d 325 (1994).

**"Last known address" construed.** — The mortgagee properly sent notice of foreclosure sale to the mortgagor at the mortgagor's house, rather than to the hospital where the mortgagor was temporarily confined as a patient; for the purposes of this section, the house to which the notice was sent by certified mail constituted the mortgagor's last known address. *Rinaldi v. Wallace*, App. D.C., 293 A.2d 847 (1972).

Where the owner of the property never notified the noteholder or the trustee under the deed of trust of the owner's change of address, the failure of the owner to receive notice, which was mailed in time to reach the owner at its old address but which did not reach that address until after the owner had moved, did not indicate a deficiency on the part of the trustees or the noteholder in giving personal notice to the owner. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

**Trustees must comply with applicable federal regulations and guidelines**, where a mortgage is insured through a federal program. *Perry v. Virginia Mtg. & Inv. Co.*, App. D.C., 412 A.2d 1194 (1980).

**Remedy upon default is sale, not possession.** — The exclusive remedy for default provided by the deed of trust is a power of sale found in paragraph seven which provides that upon default the entire indebtedness is accelerated, and the trustee is empowered by paragraph seven of the deed of trust to sell the land at public auction after advertising the sale according to the terms provided in the deed of trust and satisfying the requirements of subsection (b) of this section. The deed of trust and this section do not vest the mortgagee with possession of the property immediately upon default and a demand therefor. *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 21 F.3d 1145 (D.C. Cir. 1994).

**Relationship of trustees to noteholder.** — Where the trustees fail to disclose their respective affiliations as an attorney for and officers of the noteholder to the defaulter and her husband, this in itself does not require the foreclosure sale to be set aside. *Perry v. Virginia Mtg. & Inv. Co.*, App. D.C., 412 A.2d 1194 (1980).

Cited in *Stokes v. Hinden*, 85 F.2d 200 (D.C. Cir. 1936); *American Century Mtg. Investors v. Unionamerica Mtg. & Equity Trust*, App. D.C., 355 A.2d 563 (1976); *Turner v. Day*, App. D.C., 461 A.2d 697 (1983); *Askin v. Dustin*, 122 WLR 2053 (Super. Ct. 1994).

## § 45-715.1. Right to cure residential mortgage foreclosure default.

(a) For the purposes of this act, the term "residential mortgage" means a loan used to acquire or refinance property which is a single family dwelling, including a condominium or cooperative unit, which is the principal place of abode of the debtor or the debtor and his immediate family.

(b) Notwithstanding the provisions of any other law, after a notice of intention to foreclose a residential mortgage has been given pursuant to § 45-715, at any time up to 5 business days prior to the commencement of bidding at a trustee sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or anyone in his behalf, not more than 1 time in any 2 consecutive calendar years, may cure his default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (c) of this section.

(c) To cure a default under this section, a residential mortgage debtor shall:

(1) Pay or tender in the form of cash, cashier's check, or certified check all sums, including any reasonable late penalty, required to bring the account current, with the exception of any amounts due by operation of any acceleration clause that may be included in the security agreement;

(2) Perform any other obligation which he would have been bound to perform in the absence of default or in the absence of the exercise of an acceleration clause, if any; and

(3) Pay or tender any expenses properly associated with the foreclosure and incurred by the mortgagee to the date of debtor's payment or tender under this section. These costs and expenses may include, but not be limited to, advertising fees, trustee fees, and reasonable attorney's fees.

(d) Cure of a default pursuant to this section restores the residential mortgage debtor to the same position as if the default or the acceleration had not occurred. (March 3, 1901, 31 Stat. 1274, ch. 854, § 539a, as added May 8, 1984, D.C. Law 5-82, § 2, 31 DCR 1348.)

**Legislative history of Law 5-82.** — Law 5-82, the "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984," was introduced in Council and assigned Bill No. 5-187, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 14, 1984, and February 28, 1984, respectively. Signed by the Mayor on March 15, 1984, it was assigned Act No. 5-118 and transmitted to both Houses of Congress for its review.

**References in text.** — "This act", referred to in subsection (a), is the Act of March 3, 1901.

**Foreclosure notice defective.** — Foreclosure notice was defective as a matter of law

where it erroneously stated that the borrower did not have a right to cure and did not include the amount necessary to cure as required by the Recorder of Deeds' standard form. Bank-Fund Staff Fed. Credit Union v. Cuellar, App. D.C., 639 A.2d 561 (1994).

**Right to cure available for default.** — A fair reading of the language of the statute makes it clear that the right to cure was intended to be a generally available remedy for defaults on residential mortgages. Bank-Fund Staff Fed. Credit Union v. Cuellar, App. D.C., 639 A.2d 561 (1994).

## § 45-716. Sale of property — Deficiency judgments; limitations thereon; relief in suit to enforce vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale; provided, that the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95; 1973 Ed., § 45-616.)

**Intent of section.** — This section was intended to empower the court to combine in a single action relief by way of foreclosure and personal judgment. Hoffman v. Sheahin, 121 F.2d 861 (D.C. Cir. 1941).

**Application of proceeds of sale.** — Where a deed of trust authorized the trustees to use the proceeds of the foreclosure sale to pay the remaining unpaid balance of the principal of note, whether or not the entire balance was

due, the proceeds of sale were properly applied to pay the entire amount of the note, even though payments on the note were only .3 months delinquent. *S & G Inv., Inc. v. Home Fed. Sav. & Loan Ass'n*, 505 F.2d 370 (D.C. Cir. 1974).

**Action on note after foreclosure.** — The sole action on a note secured by mortgage after foreclosure is an action for the difference between what was realized at the sale and what is owed on the debt. *Finley v. Friedman*, App. D.C., 159 A.2d 668 (1960).

It would be inconsistent with this section to hold that if the sale brings less than the amount of the debt, a purchasing creditor need not apply the amount realized to the debt

before he can maintain an action on the debtor's personal obligation. *Finley v. Friedman*, App. D.C., 159 A.2d 668 (1960).

**Section does not extend the time for bringing an independent action to enforce personal liability** after foreclosure by nonjudicial sale. *Hoffman v. Sheahin*, 121 F.2d 861 (D.C. Cir. 1941).

**Sale not a judicial sale.** — Where the trustee under a deed of trust obtained leave of court in a receivership proceeding to sell real estate, such sale did not constitute a judicial sale. *Huffines v. American Sec. & Trust Co.*, 71 F.2d 345 (D.C. Cir. 1934).

Cited in *Walker v. Independence Fed. Sav. & Loan Ass'n*, App. D.C., 555 A.2d 1019 (1989).

## § 45-717. Same — Amount creditor to pay if purchaser.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544; 1973 Ed., § 45-617.)

**Amount creditor to apply to debt.** — When the creditor becomes a purchaser at the sale, he is entitled to credit the amount of the purchase money to the debt. *Orlove v. National Sav. & Trust Co.*, 98 F.2d 259 (D.C. Cir. 1938); *Kosters v. Hoover*, 98 F.2d 595 (D.C. Cir. 1938).

Cited in *Jackson v. Smith*, 254 U.S. 586, 41 S. Ct. 200, 65 L. Ed. 418 (1921); *Finley v. Friedman*, App. D.C., 159 A.2d 668 (1960); *American Century Mtg. Investors v. Unionamerica Mtg. & Equity Trust*, App. D.C., 355 A.2d 563 (1976).

## § 45-718. Commission to mortgagee or trustee; rates; when advertised sale not held.

(a) Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of 5% on the first \$500 and 3% on the balance of the purchase money actually paid by the purchaser at any sale, and 1½% on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

(b) When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of 1% on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor; provided, that if a sale shall actually take place under any such advertisement, he shall not be entitled to more than 1 such allowance in

addition to his commission on the proceeds of an actual sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545; 1973 Ed., § 45-618.)

**Allocation of compensation of receiver.** — In an action to foreclose a trust deed, it is for the court to allocate compensation and expenses of an appointed receiver in accordance

with justice, unburdened by any fixed rule. *Camp v. Canelacos*, 131 F.2d 236 (D.C. Cir. 1942).

### § 45-719. Petition for deed of release after death of mortgagee or trustee; procedure; summary determination.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in the court having probate jurisdiction, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party cannot be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 45-714(b) and the execution of a deed of release by such new trustee. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 130, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(c); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(2); 1973 Ed., § 45-619.)

**Section references.** — This section is referred to in § 45-714.

**§ 45-720. Conveyance and assurance by and for mentally handicapped following court order.**

It shall and may be lawful to and for any person or persons, being idiot, lunatic, or non compos mentis, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons, being idiot, lunatic, or non compos mentis, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons being idiot, lunatic, or non compos mentis, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons being idiot, lunatic, or non compos mentis, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and not idiot, lunatic, or non compos mentis, or had by him, her, or themselves executed the same. All and every person and persons being idiot, lunatic, or non compos mentis, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons, being idiot, lunatic, or non compos mentis, and only such trustee or mortgagee as aforesaid, shall and may be empowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages. (4 Geo. 2, ch. 10, §§ 1, 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D.C., p. 78, § 11; 1973 Ed., § 45-620.)

## CHAPTER 8. EFFECTIVE DATE AND RECORDATION OF DEEDS.

Sec.

- 45-801. Effective date of deeds; exception.
- 45-801.1. Defective grants recorded before April 27, 1994.
- 45-801.2. Defective grants recorded on or after April 27, 1994.
- 45-801.3. Failures in formal requisites of an instrument.
- 45-802. First recorded deed preferred.

Sec.

- 45-803. Instrument not properly executed or acknowledged not recordable.
- 45-804. Record of conveyance by infant or infant trustee as evidence.
- 45-805. Bonds and contracts relating to land recordable.
- 45-806. Map or plat of subdivisions not recordable.

### § 45-801. Effective date of deeds; exception.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, ~~executed and acknowledged and certified as provided in §§ 45-306, 45-502, 45-601 to 45-604~~ and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the Recorder of Deeds for record. (Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-501.)

**Cross references.** — As to criminal penalty for recording instrument by one who has no color of title, see § 22-1302.

**Section references.** — This section is referred to in § 45-1702.

**References in text.** — Sections 45-602 to 45-604, referred to in this section, were repealed March 6, 1991, by § 12(a) of D.C. Law 8-205.

**Purpose.** — Purpose of statute is to protect judgment creditors as well as purchasers against claims of which they had no notice. Sovran Bank/District of Columbia Nat'l v. United States (In re Aumiller), 168 Bankr. 811 (Bankr. D.D.C. 1994).

**Object of recordation requirement.** — The great object of the statutes which require the acknowledgement and recordation of deeds of conveyance is to prevent the practice of fraud upon creditors and purchasers — to furnish the means of notice and protection to innocent third parties, and to prevent such fraud and furnish such notice at the time the credit is extended or the claim reduced to judgment, on the strength of the debtor's apparent title during its record existence. Fitzgerald v. Wynne, 1 App. D.C. 107 (1893).

General intent of the statutes of registry is to protect innocent persons against prejudice from secret conveyances, by providing means through which they can know the condition of titles; and where they acquire such knowledge by means other than registry, they do not stand

in need of such protection, and do not, as a general rule, come within the purview of the statutes. Manogue v. Bryant, 15 App. D.C. 245 (1899).

The requirement consists in the duty imposed upon the grantee to record, or suffer the penalty prescribed of having the instrument declared a nullity. Though optional with the grantee as to certain parties, as to innocent purchasers and creditors it is required for his protection. Dulany v. Morse, 39 App. D.C. 523 (1913).

Purpose of recordation of deeds is to protect the rights of bona fide purchasers, creditors, assignees and others relying upon indicia of record ownership; but as between grantor and grantee, the failure of the latter to record cannot be viewed as a waiver of rights to the property. Smart v. Nevins, App. D.C., 298 A.2d 217 (1972).

**This section applies to all instruments unrecorded at the time of its passage.** Dulany v. Morse, 39 App. D.C. 523 (1913).

**Effect of deed withheld from record.** — The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title or to operate any extinguishment. Fitzgerald v. Wynne, 1 App. D.C. 107 (1893); Bunten v. American Sec. & Trust Co., 25 App. D.C. 226 (1905); Walker v. Warner, 31 App. D.C. 76 (1908).

Where deed in favor of the grantee was executed at the time of the conveyance to the grantor and the grantee did not record the deed at that time because she did not want her husband to know of the transaction the grantee did not lose title to the property even though the grantee did not record deed until after the death of the grantor. *Smart v. Nevins*, App. D.C., 298 A.2d 217 (1972).

**Effect of failure to record deed of trust.** — When a deed of trust was not recorded until several weeks after the judgment of the bank was recovered, and there was no evidence that the bank ever had actual notice of the existence of the deed of trust until after execution was issued and levied, the conveyance would be ineffectual against the bank, or any purchaser at the sale under that judgment. *Hitz v. National Metro. Bank*, 111 U.S. 722, 4 S. Ct. 613, 28 L. Ed. 577 (1884).

**Tenant's unrecorded leasehold interest** in property is terminated by foreclosure sale to new owner. *Wallace v. Occupant*, 115 WLR 2377 (Super. Ct. 1987).

**Notice of conveyances on record.** — One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it. *Sis v. Boarman*, 11 App. D.C. 116 (1897); *Armstrong v. Ashley*, 22 App. D.C. 368 (1903), aff'd, 204 U.S. 272, 27 S. Ct. 270, 51 L. Ed. 482 (1907).

One is not required to take notice of everything which is put upon the records of the land office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or his procurement, can legally affect those rights. *Armstrong v. Ashley*, 22 App. D.C. 368 (1903), aff'd, 204 U.S. 272, 27 S. Ct. 270, 51 L. Ed. 482 (1907).

**Recordation not prerequisite for actual notice.** — The delivery of a deed for record is not a prerequisite to its validity as against creditors having actual notice of its existence. *Staples v. Warren*, 46 App. D.C. 363 (1917).

**Recordation of an instrument that is not permitted by law to be recorded**, or that is not proved for record as required by law, is constructive notice to no one. *Clark v. Harmer*, 5 App. D.C. 114 (1895).

**Recordation of deed of trust from a stranger to the record title** is not constructive notice that the grantor is the grantee of last record owner. *Crosby v. Ridout*, 27 App. D.C. 481 (1906).

**Purchaser's duty to inquire into unrecorded interests.** — A purchaser is held to be on inquiry notice of all facts and outstanding interests which a reasonable inquiry would have revealed, where he is aware of circumstances which generate enough uncertainty about the state of title that a person of ordinary prudence would inquire further about those

circumstances. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

Where a party other than the record owner of property exercises an apparent right to enter into leases of that property as the lessor, it can be an indication that the lessor may have some interest in the property inconsistent with record title, and it cannot be said, without more, that a buyer of ordinary prudence would not inquire further to determine the nature of that interest. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

A purchaser who conducts a proper title search is fully protected against all unrecorded interests falling within the recording statute, with the exception of any as to which the purchaser has actual or inquiry notice. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

**Claimant of an unrecorded interest bears the burden of proving inquiry notice.** — The integrity of the recording system dictates that inquiry notice must be clearly shown, and it is the claimant of an unrecorded interest who bears the burden of proof to show that the purchaser from the record title holder was on such notice. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

**Bona fide purchasers.** — A purchaser without notice who takes from a party with knowledge of an unrecorded interest may nevertheless be deemed a protected bona fide purchaser. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

**Subsequent bona fide purchaser or creditor.** — A deed conveying an interest in real property is not effective against a subsequent bona fide purchaser or creditor without notice unless it is recorded. *Sovran Bank/District of Columbia Nat'l v. United States (In re Aumiller)*, 168 Bankr. 811 (Bankr. D.D.C. 1994); *SMS Assocs. v. Clay*, 868 F. Supp. 337 (D.D.C. 1994), aff'd, 70 F.3d 638 (D.C. Cir. 1995).

**When physical possession is relied upon as a circumstance providing notice**, it must be open and unambiguous, and not liable to be misunderstood or misconstrued, and it must be sufficiently distinct and unequivocal so as to put the purchaser on his guard. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

The type of possession necessary to give rise to inquiry notice must be inconsistent with the record title, otherwise it will not be notice of the unrecorded interest. *Clay Properties, Inc. v. Washington Post Co.*, App. D.C., 604 A.2d 890 (1992).

**Purchaser's authority to file complaint for possession of property.** — Until recording of trustee's deed evidencing sale at foreclosure, purchaser has no authority to file com-

plaint for possession of property. American Sec. Bank v. Cummings, 120 WLR 88 (Super. Ct. 1991).

**Act of delivery is essential** to the existence of any deed, bond, or note. Although drawn and signed, so long as it is undelivered, it is a nullity; not only does it take effect only by delivery, but also only on delivery. *Atlas Portland Cement Co. v. Fox*, 265 F. 444 (D.C. Cir. 1920).

A deed conveying real property or any interest therein, or declaring or limiting any use or trust thereof, cannot take effect without delivery to the person in whose favor it is executed. *Schooler v. Schooler*, 173 F.2d 299 (D.C. Cir. 1948).

**Form of delivery.** — No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery. *Walker v. Warner*, 31 App. D.C. 76 (1908).

**Possession by the grantee is prima facie evidence of delivery.** *Carus v. Savary*, 6 App. D.C. 330 (1895); *Walker v. Warner*, 31 App. D.C. 76 (1908).

**Creditors" construed.** — "Creditors," as used in this section, mean creditors who in the interval of time have fastened upon the property for the payment of their debts, and not general creditors. *Crosby v. Ridout*, 27 App. D.C. 481 (1906).

Judgment creditors are within the meaning of this section, but this applies only to cases where the credit has been extended or judgments have been secured while the record title remained in the debtor. *Atlas Portland Cement Co. v. Fox*, 265 F. 444 (D.C. Cir. 1920).

**Extent of judgment liens.** — Judgment liens extend to all lands held under apparently perfect legal title by the judgment debtor at the time of the rendition of the judgment, notwithstanding the same might be subject to some secret trust, capable of being placed upon record. *American Sav. Bank v. Eisminger*, 35 App. D.C. 51 (1910).

**Priority of judgment creditor over later-recorded deed.** — A judgment creditor who files a bill in equity to sell the equitable interest of the judgment debtor in real property, has priority over a grantee claiming under a deed executed before (but not filed for record until after) the filing of the bill. *Ohio Nat'l Bank v. Berlin*, 26 App. D.C. 218 (1905).

**Priority of prior specific lien over judgment.** — A judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien. The judgment creditor stands in the place of his debtor, and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the

rendition of the judgment. *Crosby v. Ridout*, 27 App. D.C. 481 (1906).

**Unrecorded equitable lien not effective against judgment creditor.** — Because the equitable lien was not recorded, it would not have been effective against a bona fide purchaser or judgment creditor who acquired an interest in the property without notice of that equitable lien. *Sovran Bank/District of Columbia Nat'l v. United States (In re Aumiller)*, 168 Bankr. 811 (Bankr. D.D.C. 1994).

**Priority of constructive trust inherently incapable of recordation.** — Where the vendor conveyed property and the purchaser recorded the deed but did not prepare and record the trust instrument as agreed, and thereafter creditors of the purchaser obtained judgments against him becoming liens on the real estate, if the facts disclosed a constructive trust inherently incapable of recording and no laches by the vendor, the vendor's constructive trust would have priority over the judgment creditors, but if the creditors were able to show affirmative reliance on the state of record, without notice of any infirmity, they would be entitled to the same standing as bona fide purchasers. *Osin v. Johnson*, 243 F.2d 653 (D.C. Cir. 1957).

**Trustee in bankruptcy does not take the property as an innocent purchaser**, but subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt. *Crosby v. Ridout*, 27 App. D.C. 481 (1906).

**But has standing to attack validity of deeds of trust.** — Trustee in reorganization for corporations under Chapter X of the federal Bankruptcy Act has standing to attack the validity of deeds of trust held by claimants. *In re Parkwood, Inc.*, 461 F.2d 158 (D.C. Cir. 1971).

**An assignment of rents is not a transfer of an estate in land.** *Commercial Credit Co. v. Campbell*, 74 F.2d 468 (D.C. Cir. 1934).

**Cited in** *Kresge v. Crowley*, 47 App. D.C. 13 (1917); *Young v. Howard*, 120 F.2d 712 (D.C. Cir. 1941); *Owens v. Liff*, App. D.C., 65 A.2d 921 (1949); *Glennon v. Butler*, App. D.C., 66 A.2d 519 (1949); *Osin v. Johnson*, 243 F.2d 653 (D.C. Cir. 1957); *Benson v. United States*, 442 F.2d 1221 (D.C. Cir. 1971); *Hertz v. Klavan*, App. D.C., 374 A.2d 871 (1977); *Adams v. Slonim*, 924 F.2d 256 (D.C. Cir. 1991); *Wolf v. District of Columbia*, App. D.C., 597 A.2d 1303 (1991); *First Sav. Bank v. Barclays Bank*, App. D.C., 618 A.2d 134 (1992); *Clark v. Clark*, 120 WLR 265 (Super. Ct. 1992); *Kayfirst Corp. v. Washington Term. Co.*, 813 F. Supp. 67 (D.D.C. 1993); *Harris v. Maryland Nat'l Bank*, 183 Bankr. 657 (D.D.C. 1995).

**§ 45-801.1. Defective grants recorded before April 27, 1994.**

(a) Any instrument recorded in the Office of the Recorder of Deeds before April 27, 1994, shall be effective notwithstanding the existence of 1 or more of the failures in the formal requisites listed in § 45-801.3, unless the failure was challenged in a judicial proceeding commenced within 6 months from April 27, 1994.

(b) Nothing in this section shall affect the validity of instruments recorded before April 27, 1994, which have been validated by prior law. (Mar. 3, 1901, ch. 854, § 499a, as added Apr. 27, 1994, D.C. Law 10-110, § 2(e), 41 DCR 1023.)

**Section references.** — This section is referred to in § 45-801.3.

**Effect of amendments.** — D.C. Law 10-110 added this section.

**Legislative history of Law 10-110.** — Law 10-110, the “Property Conveyancing Revision Act of 1994,” was introduced in Council and assigned Bill No. 10-88, which was referred to

the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

**§ 45-801.2. Defective grants recorded on or after April 27, 1994.**

Any instrument recorded in the Office of the Recorder of Deeds on or after April 27, 1994, shall be effective notwithstanding the existence of 1 or more of the failures in the formal requisites listed in § 45-801.3, unless the failure is challenged in a judicial proceeding commenced within 6 months after the instrument is recorded. (Mar. 3, 1901, ch. 854, § 499b, as added Apr. 27, 1994, D.C. Law 10-110, § 2(f), 41 DCR 1023.)

**Section references.** — This section is referred to in § 45-801.3.

**Effect of amendments.** — D.C. Law 10-110 added this section.

**Legislative history of Law 10-110.** — See note to § 45-801.1.

**§ 45-801.3. Failures in formal requisites of an instrument.**

(a) The failures in the formal requisites of an instrument that may be cured by this act are:

- (1) An omission of an acknowledgment or a defective or improper acknowledgment;
- (2) A failure to attach a clerk’s certificate;
- (3) An omission of a notary seal or other seal; or
- (4) An omission of an attestation.

(b) Nothing in this act shall be construed to eliminate the requirement that a deed be under seal. Any deed accepted for recordation without a seal but made effective by operation of this act shall be deemed a sealed instrument.

(c) Nothing in this act shall be construed to validate any instrument with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution or acknowledgment.

(d) Any person convicted of a fraudulent act, in connection with the validation of any instrument under §§ 45-502, 45-601, 45-801.1, and 45-801.2, shall be subject to the penalties set forth in § 22-3822. (Mar. 3, 1901, ch. 854, § 499c, as added Apr. 27, 1994, D.C. Law 10-110, § 2(g), 41 DCR 1023.)

**Section references.** — This section is referred to in § 45-801.2.

**Effect of amendments.** — D.C. Law 10-110 added this section.

**Legislative history of Law 10-110.** — See note to § 45-801.1.

**References in text.** — “This act,” referred to in subsections (a) and (b) of this section, is the Act of March 3, 1901, ch. 854. The Act of March 3, 1901 enacted a code of laws for the District of Columbia.

## § 45-802. First recorded deed preferred.

When 2 or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 500; 1973 Ed., § 45-502.)

## § 45-803. Instrument not properly executed or acknowledged not recordable.

The Recorder of Deeds shall not accept for recordation any instrument unless the instrument is executed and acknowledged according to law by the person granting or contracting his or her right, title, or interest in the land, or any instrument for property against which a lien for delinquent water, sanitary sewer, or meter service charges has been assessed in accordance with § 43-1529, § 43-1609, or § 43-1610. The Recorder of Deeds shall require any person who attempts to record a deed to convey real property to provide written certification from the Mayor that any bill rendered for water, sanitary sewer, or meter service charges to the property has been paid in full. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 555; June 30, 1902, 32 Stat. 533, ch. 1329; 1973 Ed., § 45-503; June 13, 1990, D.C. Law 8-136, § 5, 37 DCR 2620.)

**Legislative history of Law 8-136.** — Law 8-136, the “District of Columbia Water and Sewer Operations Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-192 and transmitted to both Houses of Congress for its review.

**Mayor authorized to issue rules.** — Section 8 of D.C. Law 8-136 provided that within 60 days of June 13, 1990, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this act including rules regarding deposits, meters, liens, the sale and redemption of real property, the amnesty program, receivership, termination of water and sewer services, and administrative review; that the proposed

rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, and, if the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved; and that if after 90 days from June 13, 1990, the Mayor has failed to issue proposed rules to implement the provisions of this act as provided in subsection (a) of this section, the Council may adopt any legislation necessary to accomplish the purposes of this act.

**Delegation of authority under D.C. Law 8-136, the “D.C. Water and Sewer Operations Act of 1990.”** — See Mayor’s Order 91-176, October 24, 1991.

**Duty to record instruments.** — The Recorder of Deeds is by law required to receive and file, or receive and record such instruments as have been duly executed, and which purport

on their face to be of the nature of instruments entitled to be filed or recorded. Dancy v. Clark, 24 App. D.C. 487 (1905).

**Recorder of Deeds has no jurisdiction to pass on the validity of instruments presented for record.** Dancy v. Clark, 24 App. D.C. 487 (1905).

**Recordation of racially restrictive covenants prohibited.** — The Fair Housing Act of 1968, which makes it unlawful to print or

publish any notice, statement or advertisement with respect to sale or rental of a dwelling that indicates any preference based on race, prohibits the Recorder of Deeds for District of Columbia from accepting for filing instruments which contain racially restrictive covenants. Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972).

Cited in Wallace v. Occupant, 115 WLR 2377 (Super. Ct. 1987).

## § 45-804. Record of conveyance by infant or infant trustee as evidence.

The record or a copy thereof of any deed recorded shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 519; June 30, 1902, 32 Stat. 532, ch. 1329; 1973 Ed., § 45-504; Apr. 18, 1996, D.C. Law 11-110, § 47, 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 deleted “as mentioned in §§ 45-608 and 45-609” following the first occurrence of “recorded.”

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995 and Jan-

uary 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**References in text.** — Sections 45-608 and 45-609, referred to in this section, were repealed April 27, 1994, by § 2(h)-(l) of D.C. Law 10-110.

## § 45-805. Bonds and contracts relating to land recordable.

Any title bond or other written contract in relation to land may be acknowledged, certified, and recorded in the same manner and with like effect as to notice as deeds for the conveyance of land. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 501; June 30, 1902, 32 Stat. 531, ch. 1329; 1973 Ed., § 45-505.)

## § 45-806. Map or plat of subdivisions not recordable.

It shall not be lawful for any person or persons to record any map or plat of the subdivision of land in the District of Columbia in the office of the Recorder of Deeds for said District, whether such map or plat be attached to a deed or other document or is offered separately for record. (Aug. 24, 1894, 28 Stat. 501, ch. 329; 1973 Ed., § 45-506.)

**Cross references.** — As to recordation of maps and plats in Surveyor’s office, see § 1-905 et seq.

**Recordation of plat showing servitude.** — Although subdivision plats must be duly recorded in the Office of the Surveyor, once that requirement has been met, this section does not prohibit an owner from incorporating a revised copy of the same plat in another recordable

instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision. In such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. Case v. Morrisette, 475 F.2d 1300 (D.C. Cir. 1973).

## RECORDER OF DEEDS

### CHAPTER 9. RECORDER OF DEEDS.

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*Subchapter I. Appointment and Functions of Recorder.***§ 45-901. Appointment; duties; residency requirement; mayoral supervision.**

(a) There shall be a Recorder of Deeds of the District, appointed by the Mayor of the District of Columbia, who shall:

(1) Except as provided by paragraph (2) of this subsection, record all deeds, contracts, and other instruments in writing including contract liens, affecting the title or ownership of real estate or personal property which have been duly acknowledged and certified;

(2) Accept for filing, without acknowledgment or certification, all instruments, financing statements and other papers filed in his office pursuant to part 4 of article 9 of subtitle I of Title 28 and Chapter 10 of Title 40;

(3) Perform all requisite services connected with the duties prescribed in paragraphs (1) and (2) of this subsection; and

(4) Have charge and custody of all the records, papers, and property appertaining to his office.

(b) A person may not be appointed Recorder of Deeds unless he has been a resident of the District of Columbia for at least 5 years next preceding his appointment.

(c) The performance, by the Recorder of Deeds and officers and employees in his office, of their duties and functions shall be subject to the supervision and control of the Mayor of the District. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 548; June 9, 1952, 66 Stat. 129, ch. 373, § 1; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 2; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 14; 1973 Ed., § 45-701; Mar. 14, 1985, D.C. Law 5-159, § 23, 32 DCR 30.)

**Cross references.** — As to recordation of instruments relating to personal property, see § 28:9-301 et seq.

**Legislative history of Law 5-159.** — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Prohibition against recording racially restrictive covenants.** — The Fair Housing Act of 1968 prohibits the Recorder of Deeds for the District of Columbia from accepting for filing instruments which contain racially restrictive covenants. *Mayers v. Ridley*, 465 F.2d 630 (D.C. Cir. 1972).

## § 45-902. Purchase of necessary equipment; employment of personnel.

The Recorder of Deeds of the District of Columbia is authorized and empowered to purchase such machines and equipment as he may deem necessary or expedient for the efficient, expeditious, and economical recording of all deeds and other instruments of writing entitled by law to be recorded, and to employ such personnel as may be required to operate the same and to perform necessary services in connection therewith; and all deeds and other instruments of writing entitled by law to be recorded in the Office of the Recorder of Deeds which are recorded by means of such machines or equipment are hereby declared to be legally recorded. (Aug. 4, 1947, 61 Stat. 730, ch. 456; 1973 Ed., § 45-701b.)

**Emergency act amendments.** — For temporary amendment of section, see § 3 of the Lower Income Homeownership Tax Abatement

and Incentives Act of 1983 Amendment Emergency Act of 1988 (D.C. Act 7-282, January 6, 1989, 36 DCR 481).

## § 45-903. Deputy Recorder; effect of performance of duties.

The Mayor of the District of Columbia is authorized to appoint a Deputy Recorder of Deeds, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the Deputy Recorder shall have the same legality, force, and effect as if performed by the Recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549; June 9, 1952, 66 Stat. 129, ch. 373, § 2; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 3; 1973 Ed., § 45-702; Mar. 3, 1979, D.C. Law 2-139, § 3205(uu), 25 DCR 5740.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 2-139.** — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill

No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

## § 45-904. Second Deputy Recorder; effect of performance of duties.

The Mayor of the District of Columbia is authorized to appoint a Second Deputy Recorder of Deeds. The Second Deputy Recorder may do and perform any and all acts which the Recorder is authorized to do, and all such acts by the Second Deputy Recorder shall have the same legality, force, and effect as if performed by the Recorder. (Mar. 3, 1925, 43 Stat. 1102, ch. 416; June 9, 1952, 66 Stat. 129, ch. 373, § 3; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 4; 1973 Ed., § 45-703; Mar. 3, 1979, D.C. Law 2-139, § 3205(vv), 25 DCR 5740.)

**Cross references.** — As to effective date of D.C. Law 2-139, see § 1-637.1.

**Section references.** — This section is referred to in § 1-637.1.

**Legislative history of Law 2-139.** — See note to § 45-903.

### **§ 45-905. Vacancy in Office of Recorder; Deputy to fill vacancy.**

In case of a vacancy in the Office of the Recorder by death, resignation, or other cause the Deputy Recorder shall act until a Recorder shall be duly appointed and qualified. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 550; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2; 1973 Ed., § 45-704.)

### **§ 45-906. Public records to be open for free, public inspection.**

All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the Recorder of Deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge. (Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556; 1973 Ed., § 45-705.)

### **§ 45-907. Purchase of typewriting machines; preference for typewritten records.**

(a) The Recorder of Deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

(b) The recording of all instruments filed for record in the Office of the Recorder of Deeds shall be done with book typewriter, except in those cases where, on account of the character of the work, the use of a pen shall be found by the Recorder to be necessary. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 551; June 27, 1906, 34 Stat. 489, ch. 3553; 1973 Ed., § 45-706.)

### **§ 45-908. Certain records to be recopied for preservation; limitation on expense.**

That the Recorder of Deeds of the District of Columbia shall recopy such of the records in his office as may, in his judgment and that of a judge of the Superior Court of the District of Columbia appointed for that purpose, need recopying in order to preserve the originals from destruction. The expense of such recopying may not in any fiscal year exceed \$1,000 and such expense shall be certified by a judge of the Superior Court appointed for that purpose and audited by the General Accounting Office. (Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 25, 1936, 49 Stat. 1921,

ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(d); 1973 Ed., § 45-707.)

## § 45-909. Fees of Recorder of Deeds.

(a) The legal fees for the services of the Recorder shall be as follows:

(1) For filing, recording, and indexing, or for making certified copy of any instrument containing 200 words or less, \$1, and \$.20 for each additional 100 words, to be collected at the time of filing, or when the copy is made;

(2) For each certificate and seal, \$.50;

(3) For searching records extending back 2 years or less next preceding current date, \$.50 and \$.15 for each additional year, to be paid by the party for whom the search may be made;

(4) For recording a plat or survey, \$.20 for each course such survey may contain;

(5) For recording a town plat, \$.25 for each lot such plat may contain;

(6) For taking any acknowledgment, \$.50;

(7) For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels, including a release of any such instrument, \$2; provided, that for the filing of a release of any such instrument filed prior to September 3, 1952, the Recorder of Deeds shall collect a fee of \$.50;

(8) For filing an affidavit pursuant to § 42-102, \$2;

(9) For filing and indexing any other paper required by law to be filed in his office, \$.50;

(10) For filing and recording a certified copy of a judgment, decree, or entry or order of forfeiture of a recognizance, filed and recorded under § 15-102(a), \$1;

(11) For recording the release of a lien established by the recordation of a judgment, decree, or an entry or order of forfeiture of a recognizance under § 15-102(a), \$.50.

(b) In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the Recorder of Deeds at the time of the filing of the certificate of incorporation \$.50 on each \$1,000 of the amount of capital stock of the corporation as set forth in its said certificate; provided, however, that the fee so paid shall not be less than \$50; provided further, that the Recorder of Deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10% of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees.

(c) In addition to fees otherwise provided for, the Recorder of Deeds shall charge and collect the following fees:

(1) For filing and recording each notice of mechanic's lien, \$1;

(2) For entering release of mechanic's lien, \$.50 for each order of lienor; and

(3) For each undertaking of licensee, \$.75. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; June 17, 1935, 49 Stat. 384, ch. 265; June 5, 1952, 66 Stat. 128, ch. 370, § 5; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(c); Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89-745, § 6; 1973 Ed., § 45-708.)

**Cross references.** — As to recording fees under money lenders law, see § 26-705.

As to recordation of instruments relating to personal property, see § 28:9-301 et seq. and Chapter 1 of Title 40.

As to fees under motor vehicle lien law, see § 40-1012.

**Section references.** — This section is referred to in §§ 29-1106 and 45-915.

**Cited in** Stuart v. American Sec. Bank, App. D.C., 494 A.2d 1333 (1985); Harris v. Maryland Nat'l Bank, 183 Bankr. 657 (D.D.C. 1995).

## **§ 45-910. Fees and emoluments of Recorder of Deeds deposited with Collector of Taxes.**

All of the fees and emoluments of the Office of Recorder of Deeds of the District of Columbia shall be paid at least weekly to the Collector of Taxes for the District of Columbia for deposit in the Treasury of the United States to the credit of the District of Columbia. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1; 1973 Ed., § 45-709.)

**Office of Collector of Taxes abolished.** — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Account-

ing Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IV-C of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IV-C of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

**Cited in** Kariuki v. Brown, 116 WLR 601 (Super. Ct. 1988).

## **§ 45-911. Maintenance of office to be included in estimate of District appropriations; appropriations for building, equipment, and supplies authorized.**

The annual estimates of appropriations for the government of the District of Columbia shall include estimates of appropriations for the operation and maintenance of the Office of the Recorder of Deeds. And appropriations are hereby authorized for a suitable record building for the Office of the Recorder

of Deeds, and for personal services, rentals, office equipment, office supplies, and such other expenditures as are essential for the efficient maintenance and conduct of such office. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2; 1973 Ed., § 45-710.)

**§ 45-912. Recordation of service and discharge certificates; certified copies thereof; recordation of notice or other document relating to federal tax liens; fees.**

(a) The Recorder shall also receive for record and record all certificates of service and certificates of discharge of persons released from active duty in or discharge from the armed forces of the United States, for which no fee shall be charged or collected, but the record of any certificate authorized by this section to be recorded shall not constitute constructive notice of the existence or contents of such certificate. For making certified copies of any of the foregoing certificates from the records in the Office of the Recorder the usual fees shall be charged.

(b) The Recorder of Deeds shall accept for filing any notice of federal tax lien or any other document affecting such a lien if such notice or document is in the form prescribed by the Secretary of the Treasury or his delegate and could be filed with the Clerk of the United States District Court for the District of Columbia. The fee for each such filing with the Recorder of Deeds shall be the same as the fee charged by the Recorder of Deeds for filing a similar document for a private person. The Recorder of Deeds shall bill the District Director of Internal Revenue on a monthly basis for fees for documents filed by such District Director. Any document releasing or affecting any notice of federal tax lien which has been filed with the Clerk of the United States District Court for the District of Columbia prior to the effective date of this subsection shall be filed with such Clerk. (Mar. 3, 1901, ch. 854, § 548a; Apr. 27, 1945, 59 Stat. 100, ch. 101; July 5, 1966, 80 Stat. 266, Pub. L. 89-493, § 17(b); 1973 Ed., § 45-711.)

**Cross references.**—As to requirement that federal tax liens on property situated in District be in Office of Recorder of Deeds, see 26 U.S.C. § 6323(f)(1)(C).

**References in text.**—The phrase “effective date of this subsection,” near the end of subsec-

tion (b), refers to the effective date of the Act of July 5, 1966, and § 21 of that Act provided that the Act would take effect on the first day of the first month which was at least 90 days after July 5, 1966.

**§ 45-913. Office closed on Saturdays.**

Notwithstanding the provisions of any other act, the Office of the Recorder of Deeds for the District of Columbia shall be closed on every Saturday. (Aug. 2, 1946, 60 Stat. 860, ch. 758, § 1; 1973 Ed., § 45-712.)

**§ 45-914. Extension of time for recordation; Saturday, Sunday, and legal holidays.**

Any writing, the time for recording of which expires on a Saturday, or on a Sunday, shall be deemed to have been recorded within the time prescribed if such writing be recorded on the first day thereafter other than Sunday or a legal holiday. (Aug. 2, 1946, 60 Stat. 861, ch. 758, § 2; 1973 Ed., § 45-713.)

**§ 45-915. Authority of Mayor to adjust fees; computation of rates; exception.**

(a) Notwithstanding the provisions of §§ 45-909, 40-1012, and 40-1013, or any other act of Congress, the Mayor of the District of Columbia may, from time to time, increase or decrease the fees authorized to be charged for filing, recording, and indexing or for making a certified copy of any instrument; for searching records; for taking acknowledgments; for recording plats; for filing affidavits; for filing certificates of incorporation and amendments of certificates; for recording liens, assignments of liens, or releases of liens on motor vehicles or trailers; or for any other service rendered by the Office of the Recorder of Deeds.

(b) The fees for services rendered by the Office of the Recorder of Deeds shall be fixed at such rates, computed on such bases and in such manner, as may, in the judgment of the Mayor, be necessary to defray the approximate cost of operating the Office of the Recorder of Deeds.

(c) Nothing in this section shall be construed as authorizing the Mayor to modify any provision of Chapter 3 of Title 29. (Aug. 3, 1954, 68 Stat. 650, ch. 653, § 1; 1973 Ed., § 45-714.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

*Subchapter II. Recordation Tax on Deeds.*

**§ 45-921. Definitions.**

When used in this subchapter, unless otherwise required by the context:

- (1) The word "District" means the District of Columbia.
- (2) The word "Mayor" means the Mayor of the District of Columbia, or his duly authorized agents or representatives.

(3)(A) The word "deed" means any document, instrument, or writing, including a security interest instrument, wherever made, executed, or delivered, pursuant to which:

- (i) Title to real property is conveyed, vested, granted, bargained, sold, transferred, or assigned;
- (ii) An interest in real property is conveyed, vested, granted, bargained, sold, transferred, or assigned;
- (iii) A security interest in real property is conveyed, vested, granted, bargained, sold, transferred, or assigned; or
- (iv) A transfer of an economic interest in real property is evidenced pursuant to § 45-922.2.

(B) The word "deed" shall not include a will or a lease with a term of 99 years or less.

(4) The words "real property" mean every estate or right, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District.

(5) The word "consideration," except as otherwise provided in § 45-924 of this subchapter, means the price or amount actually paid, or required to be paid, for real property including any mortgages, liens, encumbrances thereon, construction loan deeds of trust or mortgages or permanent loan deeds of trust or mortgages.

(6) The word "person" means an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, any individual acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by 2 or more persons.

(7) The word "deficiency" as used in this subchapter means the amount or amounts by which the tax imposed by this subchapter as determined by the Mayor exceeds the amount shown as the tax upon the return of the person or persons liable for the payment thereof.

(8) The word "taxpayer" means any person required by this title to pay a tax, or file a return.

(9) The words "construction loan deed of trust or mortgage" mean a deed of trust or mortgage upon real estate which is given to secure a loan for new real estate construction.

(10) The words "permanent loan deed of trust or mortgage" mean a deed of trust or mortgage upon real estate which secures an instrument made by the same obligors who made the instrument which the construction loan deed of trust or mortgage secured, and which conveys substantially the same real estate.

(11) The phrase "controlling interest" means:

(A) More than 50% of the total voting power of all classes of stock of a corporation or more than 50% of the total fair market value of all classes of stock of a corporation;

(B) More than 50% of the capital or profits in a partnership, association, or other unincorporated entity; or

(C) More than 50% of the beneficial interests in a trust.

(12) The phrase “purchase money mortgage or purchase money deed of trust” means a mortgage or deed of trust provided as payment or part payment of the purchase price of real property.

(13) The phrase “security interest” means any interest in real property acquired for the purpose of securing payment of a debt.

(14) The phrase “security interest instrument” means any instrument which conveys, vests, grants, transfers, bargains, sells, or assigns a security interest in real property. A security interest instrument may include the following:

- (A) A mortgage;
- (B) A deed of trust;
- (C) A financing statement;
- (D) A refinancing statement; or

(E) Another document, instrument, or writing which creates an encumbrance on real property.

(15) The phrase “supplemental deed” means a deed that confirms, corrects, modifies, or supplements a prior recorded deed without additional consideration. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 301; 1973 Ed., § 45-721; Sept. 13, 1980, D.C. Law 3-92, § 101(a), 27 DCR 3390; Mar. 10, 1982, D.C. Law 4-72, § 3(a), 28 DCR 5273; Sept. 9, 1989, D.C. Law 8-20, § 2(a), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(a), 41 DCR 2096.)

**Section references.** — This section is referred to in §§ 47-3503 and 47-3505.

**Effect of amendments.** — D.C. Law 10-128 rewrote (3); and added (12) through (15).

**Legislative history of Law 3-92.** — Law 3-92, the “District of Columbia Revenue Act of 1980,” was introduced in Council and assigned Bill No. 3-285, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 17, 1980 and July 1, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-214 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-72.** — Law 4-72, the “Technical Amendments to the District of Columbia Revenue Act of 1980 Act of 1981,” was introduced in Council and assigned Bill No. 4-174, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981 and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-119 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-20.** — Law 8-20, the “District of Columbia Recordation of Economic Interests in Real Property Tax Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-169, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 16, 1989 and May 30,

1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-42 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Application of Law 8-20.** — Section 4 of D.C. Law 8-20 provided that the act shall apply to all transfers of an economic interest in real property in the District after September 30, 1989.

**Application of Law 10-128.** — Section 801 of D.C. Law 10-128 provided that sections 101, 102, 104, 105, 106, 107, and 108 shall apply as of June 1, 1994.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**Transfer of functions.** — Part IV-C, 2. b. (12) of Organization Order No. 3, dated December 13, 1967, assigned to the Office of the Finance Officer, Department of General Administration, the function (except as to such duties and functions as are performed in conjunction therewith by the Recorder of Deeds) of administering, as agent of the Mayor, the provisions of Title III of Public Law 87-408 (now classified to this subchapter). Functions as stated in Part IV-C of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Functions of the Recorder of Deeds were transferred in part to the Department of Con-

sumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983, and in part to a Recorder of Deeds Division in the Department of Finance and Revenue by Reorganization Plan No. 3 of 1983, effective March 31, 1983.

**Partnership interests constitute considerations.** — Partnership interests are personalty representing shares in the profits of the partnership and constitute valuable consideration. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Assumption of debts of another will constitute consideration** and this section recognizes that form of consideration. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Cited** in *Askin v. District of Columbia*, 123 WLR 1605 (Super. Ct. 1995).

## § 45-922. Deeds exempt from tax.

The following deeds shall be exempt from the tax imposed by this subchapter:

- (1) Deeds recorded prior to the effective date of the enactment of this subchapter;
- (2) Deeds to property acquired by the United States of America or the District of Columbia;
- (3) Deeds to property acquired by an institution, organization, corporation, association, or government (other than the United States of America or the District of Columbia) entitled to exemption from real property taxation under §§ 47-1002 to 47-1010, which property was acquired solely for a purpose or purposes which would entitle such property to exemption under said §§ 47-1002 to 47-1010; provided, that a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation;
- (4) Deeds to property acquired by an institution, organization, corporation, or association entitled to exemption from real property taxation by special act of Congress, which property was acquired solely for a purpose or purposes for which such special exemption was granted; provided, that a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation;
- (5) A purchase money mortgage or purchase money deed of trust that is recorded simultaneously with the deed conveying the real property for which the purchase money mortgage or purchase money deed of trust was obtained;
- (6) Supplemental deeds;
- (7) Deeds between husband and wife, or parent and child, without actual consideration therefor;
- (8) Tax deeds;
- (9) Deeds of release of property which is security for a debt or other obligation;

(10) Deeds of personal representatives of decedents, acting under the provisions of Title 20, transferring to a distributee without additional consideration real property of a decedent;

(11) When a permanent loan deed of trust or mortgage is submitted for recordation and the tax on the construction loan deed of trust or mortgage has been timely and properly paid, no additional tax liability arises under § 45-923, except where the amount of the obligor's liability secured by the permanent loan deed of trust or mortgage exceeds the amount of his liability secured by the construction loan deed of trust or mortgage, in which case the tax shall be calculated only on the amount of such difference; provided, however, that such permanent loan deed of trust or mortgage shall contain a reference to the construction loan deed of trust or mortgage and the date and instrument number where it is recorded;

(12) Deeds to property transferred to a qualifying lower income homeownership household in accordance with § 47-3503(a);

(13) Deeds to property transferred to a qualifying nonprofit housing organization in accordance with § 47-3505(c);

(14) Deeds to property transferred to a cooperative housing association in accordance with § 47-3503(a)(2);

(15) Construction loan deeds of trust or mortgages or permanent loan deeds of trust or mortgages in accordance with § 47-3503(a)(3);

(16) A deed that conveys an economic interest in improved residential real property that is owned by a cooperative housing association;

(17) A deed by a transferor that conveys bare legal title to the trustee of a revocable trust, without consideration for the transfer, where the transferor is the beneficiary of the trust;

(18) A deed to property transferred to a beneficiary of a revocable trust as the result of the death of the grantor of the revocable trust;

(19) A deed to property transferred by the trustee of a revocable trust if the transfer would otherwise be exempt under this section if made by the grantor of the revocable trust;

(20) A deed to property transferred to a resident management corporation in accordance with § 47-3506.1; and

(21) A security interest instrument in Class 1 Property or Class 2 Property, as those classes of property are established pursuant to § 47-813, that contains no more than 5 dwelling units. Each security interest instrument submitted for recordation for which an exemption under this paragraph is claimed shall have affixed thereto an affidavit stating the following:

"I (we) the owner(s) of the real property described within certify, subject to criminal penalties for making false statements pursuant to § 22-2514, that the real property described within is either Class 1 Property or Class 2 Property, as those classes of property are established pursuant to § 47-813, with 5 or fewer units."

(22)(A) A deed to property transferred pursuant to § 29-1313.

(B) In order for limited liability companies to receive the exemption provided in subparagraph (A) of this paragraph, the Recorder of Deeds shall be

notified, within 30 days, of any change to the members or interests in profits and losses during the 12-month period following the effective date of the conversion so that the applicable recordation tax can be imposed.

(C) Violation of the provisions of subparagraph (B) of this paragraph shall be punishable pursuant to § 45-940. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302; 1973 Ed., § 45-722; June 24, 1980, D.C. Law 3-72, § 206, 27 DCR 2155; Sept. 13, 1980, D.C. Law 3-92, § 101(b), 27 DCR 3390; Mar. 10, 1982, D.C. Law 4-72, § 3(b), 28 DCR 5273; Oct. 8, 1983, D.C. Law 5-31, § 10(b), 30 DCR 3879; Mar. 16, 1989, D.C. Law 7-205, § 5, 36 DCR 457; Sept. 9, 1989, D.C. Law 8-20, § 2(b), 36 DCR 4564; Mar. 7, 1992, D.C. Law 9-56, § 3, 38 DCR 7281; June 11, 1992, D.C. Law 9-120, § 4(a), 39 DCR 3195; June 14, 1994, D.C. Law 10-128, § 101(b), 41 DCR 2096; Sept. 8, 1995, D.C. Law 11-38, § 4(b), 42 DCR 3269.)

**Section references.** — This section is referred to in §§ 45-923, 47-3503, 47-3505, and 47-3506.1.

**Effect of amendments.** — D.C. Law 10-128 rewrote (5) and (6); and added (21).

D.C. Law 11-38 added (22).

**Legislative history of Law 3-72.** — Law 3-72, the “District of Columbia Probate Reform Act of 1980,” was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-92.** — See note to § 45-921.

**Legislative history of Law 4-72.** — See note to § 45-921.

**Legislative history of Law 5-31.** — Law 5-31, the “Lower Income Homeownership Tax Abatement and Incentives Act of 1983,” was introduced in Council and assigned Bill No. 5-167, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1983 and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-53 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-205.** — Law 7-205, the “Cooperative Housing Assessment Procedure and Lower Income Homeownership Tax Abatement and Incentives Act of 1983 Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-548, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-276 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-20.** — See note to § 45-921.

**Legislative history of Law 9-56.** — Law 9-56, the “Revocable Trust Tax Exemption Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-53, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-99 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-120.** — Law 9-120, the “Public Housing Homeownership Tax Abatement Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-356, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-194 and transmitted to both Houses of Congress for its review. D.C. Law 9-120 became effective on June 11, 1992.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Legislative history of Law 11-38.** — Law 11-38, the “Limited Liability Company Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-75, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 19, 1995, it was assigned Act No. 11-71 and transmitted to both Houses of Congress for its review. D.C. Law 11-38 became effective on September 8, 1995.

**Application of Law 8-20.** — See note to § 45-921.

**Application of Law 10-128.** — See note to § 45-921.

**Mayor authorized to issue rules.** — Section 6 of D.C. Law 9-56 provided that the Mayor

shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of the act.

Section 5 of D.C. Law 9-120 provided that the Mayor may, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of the act.

**Proper focus of exemption of paragraph (6)** is the consideration which passed from 1 party to the other in exchange for the property, rather than the equivalency of value of the interests. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Improper to apply tax on basis of similarity between businesses.** — The elements of similarity between 2 business enterprises are not relevant to determining the nature of the property transaction between them; applying the deed recordation tax on that basis is not proper. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

Simply because an enterprise conveying property dissolved, and the grantee remained, and the participants in both business enterprises were similar, the original exchange is not recast into something other than a property transfer between 2 separate business entities for purposes of the exemption provided by this section. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Exemption inapplicable where deeds reflect conveyance.** — Where deeds reflect a conveyance of property from 1 entity to another, they cannot be said to "confirm, correct, modify or supplement a deed previously recorded" as required by the statutory exemption. *Columbia*

*Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Assumption of debts of another will constitute consideration** and this section recognizes that form of consideration. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Transactions which do not meet paragraph (6) exemption.** — A party's assumption of another party's liabilities, and its conveyance of partnership interests, is not a property exchange falling under paragraph (6) of this section. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

Any consideration beyond merely nominal or pro forma consideration will make the exemption in paragraph (6) of this section inapplicable. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

The exemption in paragraph (6) of this section does not apply to a transfer of property upon dissolution of a partnership where property is transferred from the partnership to an individual who held an interest in the partnership; such a transfer involves two separate legal entities. *Cowan v. District of Columbia Dep't of Fin. & Revenue*, App. D.C., 454 A.2d 814 (1983).

**Deed between parents and trust for benefit of children.** — The deed recordation tax exemption which is provided in this section for deeds between parent and child made without consideration also applies to a conveyance of real property made by parents to the trustees under a trust they established for the benefit of their children. *District of Columbia v. Orleans*, 406 F.2d 957 (D.C. Cir. 1968).

## § 45-922.1. Sales or assignments of instruments on secondary market exempt from tax.

A sale or assignment of a note, mortgage, deed of trust, or other instrument from one lender to another, on the secondary market, where there are no changes in the terms or conditions provided in the instrument and the borrower has taken no action to refinance, shall be exempt from the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302a, as added June 14, 1994, D.C. Law 10-128, § 101(c), 41 DCR 2096.)

**Effect of amendments.** — D.C. Law 10-128 added this section.

**Legislative history of Law 10-128.** — Law 10-128, the "Omnibus Budget Support Act of 1994," was introduced in Council and assigned Bill No. 10-575, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 22, 1994,

and April 12, 1994, respectively. Signed by the Mayor on April 14, 1994, it was assigned Act No. 10-225 and transmitted to both Houses of Congress for its review. D.C. Law 10-128 became effective on June 14, 1994.

**Application of Law 10-128.** — See note to § 45-921.

## § 45-922.2. Transfer of economic interest defined.

(a) A transfer of an economic interest in real property occurs upon the conveyance, vesting, granting, bargaining, sale, or assignment, directly or indirectly, of a controlling interest by 1 or more persons or by 1 or more transactions, within any 12-month period, in any corporation, partnership, association, trust, or other entity that, during the 12-month period immediately preceding the transfer of an economic interest in real property:

(1) Derives more than 50% of its gross receipts from the ownership or disposition of real property in the District; or

(2) Holds real property in the District that has a value comprising 80% or more of the value of its entire tangible asset holdings.

(b) For the purposes of subsection (a) of this section, a transfer of a controlling interest includes the aggregate of the transfer of any legal, equitable, beneficial, or other ownership interest in:

(1) Any entity described in subsection (a) of this section;

(2) Any entity that is a partner in, shareholder in, or beneficiary of, an entity described in subsection (a) of this section; and

(3) Any other entity:

(A) That derives, directly or indirectly, any portion of its receipts from the ownership of any entity described in subsection (a) of this section; or

(B) Has asset value that includes, directly or indirectly, any legal, equitable, beneficial, or other ownership interest in any entity described in subsection (a) of this section. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87-408, title III, § 302b, as added June 14, 1994, D.C. Law 10-128, § 101(d), 41 DCR 2096.)

**Section references.** — This section is referred to in §§ 45-921 and 45-924.

**Effect of amendments.** — D.C. Law 10-128 added this section.

**Emergency act amendments.** — For temporary addition of section, see § 101(d) of the Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-224, April 14, 1994, 41 DCR 2079).

For temporary repeal of the Omnibus Budget Support Emergency Act of 1994, see § 801 of the Second Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-226, April 14, 1994, 41 DCR 2113).

For temporary addition of section, see § 101(d) of the Second Omnibus Budget Support Emergency Act of 1994 (D.C. Act 10-226, April 14, 1994, 41 DCR 2113).

Section 701(1) of D.C. Act 10-224 provides for application of the act.

Section 901 of D.C. Act 10-226 provides for application of the act.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Application of Law 10-128.** — See note to § 45-921.

## § 45-923. Imposition of tax; rate; return; contents; liability for tax; extension of period for filing, and waiver of, return.

(a)(1) At the time it is submitted for recordation, a deed that conveys title to real property in the District shall be taxed at a rate of 1.1% of the total consideration for the deed.

(2) At the time it is submitted for recordation, a deed that evidences a transfer of an economic interest in real property shall be taxed at the rate of 2.2% of the total consideration allocable to the real property.

(3) At the time it is submitted for recordation, a security interest instrument shall be taxed at a rate of 1.1% of the total amount of debt incurred which is secured by the interest in real property. However, when existing debt is refinanced, the recordation tax shall only apply to the amount of any new debt incurred over and above the amount of the principal balance due on existing debt if the existing debt was a purchase money mortgage or purchase money deed of trust or subject to taxation under this paragraph.

(4) Security interest instruments that qualify for exemption under § 45-922 shall be exempt from the recordation tax.

(a-1) Repealed.

(b) Each such deed shall be accompanied by a return under oath in such form as the Mayor may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed or debt secured by the deed, the amount of tax payable, whether the property to which the deed or document refers is a residential real property as defined in § 47-1401, the instrument number and date of any prior recorded supplemental deed, and such other information as the Mayor may require so as to provide an accurate and complete public record of each transfer of residential real property.

(b-1)(1) A purchase money mortgage or purchase money deed of trust shall:

(A) Be fully executed within 30 days of the date that the deed conveying title to the real property to the purchaser is fully executed; and

(B) Be recorded within 30 days after the date that the deed conveying title to the purchaser of the real property is duly recorded.

(2) A purchase money mortgage or purchase money deed of trust submitted to the Mayor for recordation shall:

(A) Be executed by the purchaser of the real property as part of a series of transactions conveying title to real property to the purchaser;

(B) Reference the deed conveying title to the purchaser of the real property by date and instrument number;

(C) Recite on the face of the document that it is a purchase money mortgage or purchase money deed of trust; and

(D) Recite on the face of the document the amount of purchase money that it secures.

(c) The parties to a deed which is submitted to the Mayor for recordation shall be jointly and severally liable for payment of the taxes imposed by this section; provided, that neither the United States nor the District of Columbia shall be subject to such liability.

(d) The Council of the District of Columbia with respect to paragraph (1) of this subsection, and the Mayor with respect to paragraph (2) of this subsection, are authorized:

(1) To prescribe by regulation for reasonable extensions of time for the filing of the return required by subsection (b) of this section; and

(2) To waive as to any party to a deed the requirement for the filing of a return by such party whenever it shall be determined by the Mayor that a return cannot be filed; provided, that any waiver granted by the Mayor to a party shall not, unless specifically authorized, be deemed to be a waiver as to any other party. Any waiver made pursuant to this subsection shall not affect

the requirements of subsection (c) of this section. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 303; 1973 Ed., § 45-723; Oct. 21, 1975, D.C. Law 1-23, title II, § 203, 22 DCR 2097; July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765; Sept. 13, 1980, D.C. Law 3-92, § 101(c), 27 DCR 3390; July 25, 1989, D.C. Law 8-17, § 8(a), 36 DCR 4160; Sept. 9, 1989, D.C. Law 8-20, § 2(c), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(e), 41 DCR 2096.)

**Cross references.** — As to creation, alteration and validity of conservation easements, see § 45-2602.

**Section references.** — This section is referred to in §§ 45-922, 45-922.2, 45-924, 45-926, 45-2602, and 47-1401.

**Effect of amendments.** — D.C. Law 10-128 rewrote (a) and (b); repealed (a-1); and added (b-1).

**Legislative history of Law 1-23.** — Law 1-23, the “Revenue Act of 1975,” was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-91.** — Law 2-91, the “Residential Real Property Transfer Excise Tax Act of 1978,” was introduced in Council and assigned Bill No. 2-101, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, second amended first, and second readings on February 21, 1978, March 7, 1978, March 21, 1978 and April 4, 1978, respectively. Signed by the Mayor on April 27, 1978, it was assigned Act No. 2-189 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-92.** — See note to § 45-921.

**Legislative history of Law 8-17.** — Law 8-17, the “Revenue Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-224, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 2, 1989 and May 16, 1989, respectively. Signed by the Mayor on May 26, 1989, it was assigned Act No. 8-34 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-20.** — See note to § 45-921.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Application of Law 8-17.** — Section 12 of D.C. Law 8-17 provided that §§ 2(a), (b) and (c) and 3 shall apply to all taxable years beginning after December 31, 1988. Section 2(d) and (e) shall apply to all taxable periods beginning after September 30, 1989. All other Sections of the act shall apply as of July 1, 1989.

**Application of Law 8-20.** — See note to § 45-921.

**Application of Law 10-128.** — See note to § 45-921.

**Exemption from taxation for conversion of a partnership to a limited liability company.** — For exemption from the recordation tax imposed by this section in connections with the conversion of a partnership to a limited liability company, see § 29-1313(k) as added by § 2(d) of D.C. Law 11-38.

Section 3 of D.C. Law 11-38 provided that § 2 of the act shall apply as of July 23, 1994.

**Delegation of Authority Under D.C. Act 8-42,** the “District of Columbia Recordation of Economic Interests in Real Property Tax Amendment Act of 1989.” — See Mayor’s Order 89-205, September 11, 1989.

**D.C. Law Review.** — For article, “The rental housing conversion and sale act: A practitioner’s roadmap to tenant ownership,” see 2 D.C. L. Rev. 91 (1993).

**Improper to apply tax on basis of similarity between businesses.** — The elements of similarity between 2 business enterprises are not relevant to determining the nature of the property transaction between them; applying the deed recordation tax on that basis is not proper. *Columbia Realty Venture v. District of Columbia*, App. D.C., 433 A.2d 1075 (1981).

**Cited** in *McCulloch Dev. Corp. v. Winkler*, 531 F. Supp. 83 (D.D.C. 1982); *Askin v. District of Columbia*, 123 WLR 1605 (Super. Ct. 1995).

**§ 45-924. Computation of tax where absence of or no consideration; when fair market value to be shown on return; consideration on deeds of trust or mortgages.**

(a) Consideration for a deed conveying title to real property or transferring an economic interest in real property, for purposes of the tax imposed by § 45-923(a) and (b), including any mortgages, liens, or encumbrances thereon, shall be the amount required to be paid or provided in exchange for the execution and delivery of the deed. Where no price or amount is paid or required to be paid for the real property or for the transfer of an economic interest in real property or where the price is nominal, the consideration for the deed shall, for purposes of the tax imposed by § 45-923(a) and (b), be the fair market value of the real property, and the tax shall be based upon the fair market value.

(b) On a deed conveying a security interest in real property, the principal amount of debt that the deed secures, for the purposes of the tax imposed by § 45-923(c), shall be the principal amount of the debt recited on the face of the deed unless, from other information available to the Mayor, the Mayor determines that the principal amount of debt is a higher amount.

(c) Whenever, in the opinion of the Mayor, a submission for recordation does not contain sufficient information to determine the fair market value of real property conveyed by a deed, an economic interest in real property transferred by a deed, or the principal amount of debt secured by a deed, the Mayor may determine the amount from the information available. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 304; 1973 Ed., § 45-724; Sept. 13, 1980, D.C. Law 3-92, § 101(d), 27 DCR 3390; Sept. 9, 1989, D.C. Law 8-20, § 2(d), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(f), 41 DCR 2096.)

**Section references.** — This section is referred to in § 45-921.

**Effect of amendments.** — D.C. Law 10-128 rewrote this section.

**Legislative history of Law 3-92.** — See note to § 45-921.

**Legislative history of Law 8-20.** — See note to § 45-921.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Application of Law 8-20.** — See note to § 45-921.

**Application of Law 10-128.** — See note to § 45-921.

**Basis of computation of tax.** — The law of

the District of Columbia does not require that the recordation and transfer taxes on real property sold in foreclosure be computed solely on the basis of "fair market value" rather than the amount that was actually paid. *Askin v. District of Columbia*, 123 WLR 1605 (Super. Ct. 1995).

**Sales price not nominal.** — As a matter of law that sales prices in a foreclosure case were not nominal. *Askin v. District of Columbia*, 123 WLR 1605 (Super. Ct. 1995).

**Cited** in *Dupont Park Apts. v. District of Columbia*, 345 F.2d 109 (D.C. Cir. 1965); *Cowan v. District of Columbia Dep't of Fin. & Revenue*, App. D.C., 454 A.2d 814 (1983).

**§ 45-925. Investigation by Mayor; summons; production of books, records, etc.; compelling attendance and production; refusal or obstruction of investigation.**

The Mayor, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to any provision of this subchapter or pursuant to any regulations of the Council of the District of Columbia promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, or for the purposes of ascertaining whether a deed or other document was required to be recorded pursuant to § 47-1431, is authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Mayor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons as herein provided then, and in that event, the Mayor may report that fact to the Superior Court for the District of Columbia, or one of the judges thereof, and said Court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that Court. Any person in custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Mayor or any person designated by him of any such books, papers, or memorandums, or who shall obstruct or hinder the Mayor or any person designated by him in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87-408, title III, § 305; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(41); 1973 Ed., § 45-725; July 13, 1978, D.C. Law 2-91, § 304, 24 DCR 9765.)

**Cross references.** — As to contempt powers of Superior Court, see § 11-944.

As to other penalty provisions, see §§ 45-929, 45-930, 45-940, and 45-941.

**Legislative history of Law 2-91.** — See note to § 45-923.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 45-926. No recordation until return filed and tax paid; deeds evidencing transfer of economic interest in real property in District.**

(a) Except as otherwise provided in the subchapter, no deed shall be recorded by the Mayor until the return required by this subchapter shall have been filed, and the tax imposed by this subchapter shall have been paid.

(a-1) The Recorder of Deeds shall not accept for recordation a deed which transfers or conveys a fee simple interest in real property, except a deed that transfers or conveys a fee simple interest in real property that is under the Distressed Properties Improvement Program established pursuant to § 45-2584, or the Homestead Housing Preservation Program established pursuant to § 45-2704, until all delinquent real property taxes and interest and penalties related to the real property have been paid. For the purposes of this subsection, the term “instrument” shall not include a lien.

(b) Each deed shall be recorded in accordance with § 47-1431. If a deed evidences a transfer of an economic interest in real property in the District under § 45-922.2, the corporation, partnership, association, trust, or other unincorporated entity shall record the deed within 30 days of the transfer, together with the return required by § 45-923(b). The form of the deed required to be filed shall be prescribed by the Mayor. The Recorder of Deeds of the District shall maintain a separate filing and indexing system for deeds that evidence a transfer of an economic interest in real property in the District, which shall be open to the public. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 306; 1973 Ed., § 45-726; Sept. 9, 1989, D.C. Law 8-20, § 2(e), 36 DCR 4564; June 14, 1994, D.C. Law 10-128, § 101(g), 41 DCR 2096; May 5, 1995, D.C. Law 11-9, § 2, 42 DCR 1173.)

**Effect of amendments.** — D.C. Law 10-128 substituted “§ 45-922.2” for “§ 45-923(a-1)” in the first sentence in (b).

D.C. Law 11-19 inserted (a-1).

**Legislative history of Law 8-20.** — See note to § 45-921.

**Legislative history of Law 10-128.** — See note to § 45-922.1.

**Legislative history of Law 11-9.** — Law 11-9, the “Real Property Deed Recordation Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-14, which was retained by Council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on February 17, 1995, it was assigned Act No. 11-19 and transmitted to both Houses of Congress for its review. D.C. Law 11-9 became effective on May 5, 1995.

**Application of Law 8-20.** — See note to § 45-921.

**Application of Law 10-128.** — See note to § 45-921.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-927. Burden on taxpayer to prove deed exempt from tax.

For the purpose of proper administration of this subchapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable and the burden shall be upon the taxpayer to show that a deed is exempt from tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 307; 1973 Ed., § 45-727.)

## § 45-928. Deficiencies in tax; notice of determination; protests; hearings; time for payment.

(a) If a deficiency in tax is determined by the Mayor, the person liable for the payment thereof shall be notified by registered or certified mail of said determination which shall include a statement of taxes due and given a period of not less than 30 days after such notice is sent in which to file a protest with the Mayor and show cause or reason why the deficiency should not be paid. If no protest is filed within such 30-day period, the deficiency as determined by the Mayor shall be final. If a protest is filed within said period of 30 days, opportunity for hearing thereon shall be granted by the Mayor, and a final decision thereon shall be made as quickly as practicable and notice of such decision, together with a statement of taxes finally determined to be due, shall be sent by registered or certified mail to the person liable for the payment of the deficiency.

(b) Any deficiency in tax which has become final in accordance with the provisions of subsection (a) of this section shall, if no protest is filed, be due and payable within 10 days after the expiration of the 30-day period provided in subsection (a) of this section or, if a protest is filed, shall be due and payable within 10 days after notice of the final decision of the Mayor upon such protest is sent to the person liable for payment of the deficiency. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 308; 1973 Ed., § 45-728.)

**Section references.** — This section is referred to in §§ 45-934 and 47-1433.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 45-929. Penalties for late filing of return and for deficiency; interest on deficiency assessments; extension of time for payment of deficiency.**

(a) In case of any failure to make and file a correct return as required by this subchapter within the time prescribed by this subchapter or prescribed by the Mayor in pursuance of this subchapter, 5% of the tax imposed by this subchapter shall be added to such tax for each month or fraction thereof that such failure continues, not to exceed 25% in the aggregate, except that when a return is filed after such time and it is shown that the failure to file was due to reasonable cause and not due to neglect the Mayor may in his discretion waive, in whole or in part, the addition to the tax provided by this subsection.

(b) The amount added to any tax under subsection (a) of this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of neglect.

(c) Interest upon the amount finally determined as a deficiency shall be assessed at the same time as the deficiency, and shall be collected as a part of the tax, at the rate of one-half of 1% per month or portion of a month, from the date prescribed for the payment of the tax to the date the deficiency is assessed.

(d) If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1% per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1% per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(e) If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5% of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then 50% of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

(g) Where a deficiency, or any interest or additional amounts assessed in connection therewith under subsection (c), (e), or (f) of this section is not paid in full within the time prescribed by this section, there shall be collected as a part of the tax interest upon the unpaid amount at the rate of one-half of 1% per month or portion of a month from the date when such unpaid amount was due until it is paid.

(h) The Mayor is authorized at the request of the taxpayer to extend the time for payment by the taxpayer of the amount of the tax imposed by this subchapter, whether determined as a deficiency or otherwise, for a period not to exceed 6 months from the date prescribed for the payment of such tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87-408, title III, § 309; 1973 Ed., § 45-729.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-930. When Mayor may compromise tax; written agreement as to tax liability; finality thereof; penalties for certain acts in relation to compromises and agreements; prosecutions.

(a) Whenever in the opinion of the Mayor there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Mayor may compromise such tax.

(b) The Mayor is authorized to enter into a written agreement with any person relating to the liability of such person for payment of the tax imposed under this subchapter. Any such agreement which is approved by the Mayor and the taxpayer involved, or his authorized agent or representative, shall be final and conclusive and — except upon a showing of fraud, malfeasance, or misrepresentation of a material fact — the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded.

(c) Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any written agreement under this section or offer to enter into any such agreement, conceals from any officer or employee of the District of Columbia any material fact relating to the tax imposed by this subchapter; destroys, mutilates, or falsifies any books, documents, or record; or makes under oath any false statements relating to the tax imposed by this subchapter shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned for not more than 1 year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia, in the name of the District of Columbia, on information by the Corporation Counsel of the District of Columbia or any of his assistants. (Mar. 2, 1962, 76 Stat. 14, Pub. L. 87-408, title III, § 310; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 45-730.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-931. Mayor may compromise penalties and adjust interest.

The Mayor shall have the power for cause shown to compromise any penalty which may be imposed under the provisions of this subchapter. The Mayor may adjust any interest, where, in his opinion, the facts in the case warrant such action. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 311; 1973 Ed., § 45-731.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-932. Limitations; assessment or proceeding within 3 years of recordation of deed; exceptions; agreement to extend period; tolling thereof.

(a) Except as otherwise provided in this section, the amount of any tax imposed by this subchapter shall be assessed within 3 years after the deed is recorded by the Mayor and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) In the case of a false or fraudulent return, with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In case of a wilful attempt in any manner to defeat or evade the tax imposed by this subchapter, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) In the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) Where, before the expiration of the time prescribed in this section for the assessment of the tax imposed by this subchapter, the Mayor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(f) The running of the period of limitations provided in this section on the making of assessments, or the collection of the tax imposed by this subchapter in any manner authorized by law, shall be suspended for any period during which the Mayor is prohibited from making the assessment or from collecting said tax, and for 90 days thereafter; provided, that in any case where a proceeding is commenced by a taxpayer in any court in connection with the tax imposed by this subchapter, the running of the period of limitations shall be suspended for the period of the pendency of such proceeding and for 90 days after the decision of the court shall have become final or, if the proceeding shall have been dismissed or otherwise disposed of, for a period of 90 days after such dismissal or other disposition. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 312; 1973 Ed., § 45-732.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 45-933. Administration of oaths and affidavits by Mayor.

The Mayor is authorized to administer oaths and affidavits in relation to any matter or proceeding conducted by him in the exercise of his powers and duties under this subchapter. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87-408, title III, § 313; 1973 Ed., § 45-733.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### § 45-934. Appeal from deficiency assessment.

Any person aggrieved by any assessment of a deficiency in tax finally determined by the Mayor under the provisions of § 45-928 may appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, and 47-3306 to 47-3308, as amended and as the same may hereinafter be amended. (Mar. 2, 1962, 76 Stat.

15, Pub. L. 87-408, title III, § 314; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, §§ 156(b), 161(e)(1); 1973 Ed., § 45-734.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### **§ 45-935. Overpayments and refunds thereof; collection by restraint and liens; jeopardy assessments.**

The provisions of § 47-3310 and the provisions of §§ 47-412 and 47-413 shall be applicable to the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 315; 1973 Ed., § 45-735.)

### **§ 45-936. Stamps and other devices as evidence of collection and payment of taxes.**

The Council of the District of Columbia is authorized to prescribe by regulation such methods or devices, or both, including the use of a stamp or stamps, for the evidencing of payment, and the collection of the taxes imposed by this subchapter, as it may deem necessary and proper for the administration of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title II, § 316; 1973 Ed., § 45-736.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(334) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

### **§ 45-937. Promulgation of rules and regulations by Mayor.**

The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 317; 1973 Ed., § 45-737; July 25, 1989, D.C. Law 8-17, § 8(b), 36 DCR 4160.)

**Legislative history of Law 8-17.** — See note to § 45-923.

**Application of Law 8-17.** — See note to § 45-923.

## § 45-938. Abatement of taxes due where cost does not warrant collection.

The Mayor is authorized to abate the unpaid portion of any tax due under the provisions of this subchapter, or any liability in respect thereof, if the Mayor determines under rule or regulation prescribed by the Council of the District of Columbia that the administration and collection costs involved would not warrant collection of the amount due. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 318; 1973 Ed., § 45-738.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-939. Elimination of fractional stamps or devices; payment of tax to nearest dollar.

For the purpose of avoiding, in the case of any stamps or devices employed pursuant to authority of this subchapter, the issuance of stamps or the employment of devices representing fractional parts of \$1, the Mayor is authorized, in his discretion, to limit the denominations of such stamps or devices to amounts representing \$1 or multiples of \$1, and to prescribe further that where part of the tax due is a fraction of \$1, the tax paid shall be paid to the nearest dollar. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 319; 1973 Ed., § 45-739.)

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

**§ 45-940. General criminal penalties; prosecutions by Corporation Counsel.**

Whoever violates any provision of this subchapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this subchapter, shall be subject to a fine of not more than \$1,000, or to imprisonment of not more than 1 year, or to both such fine and imprisonment. Prosecutions for violations of this subchapter shall be on information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 320; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(a), 161(e)(2); 1973 Ed., § 45-740.)

**§ 45-941. Illegal acts relating to stamps and other devices; penalties.**

Any person who:

(1) With intent to defraud, alters, forges, makes, or counterfeits any stamp, or other device prescribed under authority of this subchapter for the collection or payment of any tax imposed by this subchapter, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, or other device; or

(2) Fraudulently cuts, tears, or removes from any deed, parchment, paper, instrument, writing, or article, upon which any tax is imposed by this subchapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this subchapter; or

(3) Fraudulently uses, joins, fixes, or places to, with, or upon any deed, parchment, paper, instrument, writing, or article, upon which a tax is imposed by this subchapter:

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other deed, parchment, paper, instrument, writing, or article upon which any tax is imposed by this subchapter; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4)(A) Wilfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) Knowingly or wilfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered

stamp, which has been removed from any deed, parchment, paper, instrument, writing, package, or article; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87-408, title III, § 321; 1973 Ed., § 45-741.)

### **§ 45-942. Collected moneys to be deposited in United States Treasury.**

All moneys collected under this subchapter shall be deposited in the Treasury of the United States to the credit of the General Fund of the District of Columbia. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 322; 1973 Ed., § 45-742.)

### **§ 45-943. Separability clause.**

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid the remainder of this subchapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 323; 1973 Ed., § 45-743.)

### **§ 45-944. Appropriations to carry out provisions of subchapter.**

There are hereby authorized to be appropriated such amounts as may be necessary for the carrying out of the provisions of this subchapter, including the use of stamps or other devices for evidencing payment of the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, title III, § 324; 1973 Ed., § 45-744.)

## CHAPTER 10. SALE OF CONTINGENT AND LIMITED INTERESTS.

Sec.

- 45-1001. Sale of life estate and contingent remainder in issue upon application of life tenant.  
 45-1002. Application for sale by verified bill; contents; parties.

Sec.

- 45-1003. Proceeds of sale held by court and treated as real estate.  
 45-1004. Sale of limited estate and future interest generally; court decree; binding effect thereof.

**§ 45-1001. Sale of life estate and contingent remainder in issue upon application of life tenant.**

Where real estate is limited to 1 or more for life, with a contingent limitation over to such issue of 1 or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 97; 1973 Ed., § 45-1101.)

**Section controls over § 45-1004.** — This section clothes the court with authority to sell a restricted and particular class of limited estates, and is therefore special legislation, the specific provisions of which have to be given effect as against the more general and more

comprehensive provisions of § 45-1004 on the same subject matter. *Simon v. Simon*, 26 F.2d 530 (D.C. Cir. 1928).

**Cited** in *United States ex rel. Hine v. Morse*, 218 U.S. 493, 31 S. Ct. 37, 54 L. Ed. 1123 (1910).

**§ 45-1002. Application for sale by verified bill; contents; parties.**

Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of 14 years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 98; 1973 Ed., § 45-1102.)

**§ 45-1003. Proceeds of sale held by court and treated as real estate.**

The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 99; 1973 Ed., § 45-1103.)

**§ 45-1004. Sale of limited estate and future interest generally; court decree; binding effect thereof.**

Wherever 1 or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim, or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 100; 1973 Ed., § 45-1104.)

Cited in Simon v. Simon, 26 F.2d 530 (D.C. Cir. 1928).

## CHAPTER 11. USES AND TRUSTS.

Sec.

- 45-1101. Legal estate in cestui que use; exception.  
 45-1102. Where several are jointly seized of lands to use of any so seized, latter deemed to have possession and seizin alone.

Sec.

- 45-1103. Effect of purchase for value without notice of trust; where express trust not declared in conveyance.

**§ 45-1101. Legal estate in cestui que use; exception.**

Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1617; 1973 Ed., § 45-1201.)

**Cross references.** — As to fraudulent conveyances, see §§ 28-3101 to 28-3103.

**Active and passive trusts distinguished.** — If the testamentary trustee has duties to perform, the trust is active and the trustee will take title and administer and manage the prop-

erties, but if the trustee has no duties other than to convey title, the trust is passive and the title vests in devisees. *Liberty Nat'l Bank v. Smoot*, 135 F. Supp. 654 (D.D.C. 1955).

**Cited in** *Lake v. Angelo*, App. D.C., 163 A.2d 611 (1960).

**§ 45-1102. Where several are jointly seized of lands to use of any so seized, latter deemed to have possession and seizin alone.**

Where divers and many persons be, or hereafter shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, in every such case those person or persons which have or hereafter shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, and other hereditaments, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments; saving and reserving to all and singular persons, and bodies politic, their heirs, and successors, other than those person or persons which be seized, or hereafter shall be seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had before the year

1535. (27 Hen. 8, ch. 10, § 2, 1535; Kilty's Rep. 231; Alex. Br. Stat. 294; Comp. Stat. D.C., 537, § 2; 1973 Ed., § 45-1202.)

### § 45-1103. Effect of purchase for value without notice of trust; where express trust not declared in conveyance.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1618; 1973 Ed., § 45-1203.)

**Purpose of valuable consideration.** — The purpose of requiring valuable consideration under this section is to ensure that unrecorded deeds and mortgages are only invalidated if equity compels that result — that is, if another party has acted in detrimental reliance on the failure to record. *Jarvis v. Technical Land, Inc.*, 172 Bankr. 429 (Bankr. D.D.C.), aff'd, 175 Bankr. 792 (Bankr. D.D.C. 1994).

**Protected parties.** — This section, by its terms, only protects the interest of a purchaser for valuable consideration; a judgment lienor is not entitled to protection under this section.

*Jarvis v. Technical Land, Inc.*, 172 Bankr. 429 (Bankr. D.D.C.), aff'd, 175 Bankr. 792 (Bankr. D.D.C. 1994).

**Receiverships distinguished.** — Defendants' argument that a receivership action created a resulting trust, which was subsequently defeated by the transfer of the subject property to a bona fide purchaser, was without merit, as a receivership cannot be equated with a resulting trust. *Jarvis v. Technical Land, Inc.*, 172 Bankr. 429 (Bankr. D.D.C.), aff'd, 175 Bankr. 792 (Bankr. D.D.C. 1994).

## CHAPTER 12. WASTE.

Sec.	Sec.
45-1201. Writ of waste; lease forfeited for waste and lessee to pay treble damages.	waste although tenant's interest assigned to another; applicability of provisions.
45-1202. Waste prohibited without written license; damages; amercement.	45-1204. Joint tenant or tenant in common against cotenant.
45-1203. Reversioner may maintain writ of	

**§ 45-1201. Writ of waste; lease forfeited for waste and lessee to pay treble damages.**

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or in dower; and he which shall be attainted of waste, shall lease the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. (6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D.C., 319, § 21; 1973 Ed., § 45-1301; Oct. 1, 1976, D.C. Law 1-87, § 41, 23 DCR 2544.)

**Legislative history of Law 1-87.** — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

**"Waste" construed.** — Acts constituting a breach of an express covenant, which are of such a nature that when followed by other instances of abuse of the property by the tenant result in injury to the reversion, constitute "waste." Klein v. Longo, App. D.C., 34 A.2d 359 (1943).

**Covenant not to commit, or suffer waste to be committed, is implied in every lease.** Klein v. Longo, App. D.C., 34 A.2d 359 (1943).

**§ 45-1202. Waste prohibited without written license; damages; amercement.**

Fermors, during their terms, shall not make waste, sale or exile of house or woods, nor of anything belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention that they may do it; which thing if they do, and thereof be convict, they shall yield full damage and shall be punished by amercement grievously. (52 Hen. 3, ch. 23, § 2, 1267; Kilty's Rep. 209; Alex. Br. Stat. 46, 47; Comp. Stat. D.C., 318, § 19; 1973 Ed., § 45-1302.)

**§ 45-1203. Reversioner may maintain writ of waste although tenant's interest assigned to another; applicability of provisions.**

Because that diverse people in times past have let their lands and tenements to divers persons, that is to say, some for term of life or of another man's life, and some for term of years, the said tenants have oftentimes let and granted their estate which they had in the same lands and tenements, to many persons, to the intent that they in the reversion, that is to say, their lessors, their heirs,

or their assigns, might not have knowledge of their names, and after the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disheritance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estates, in the manner and form above-said, were unpunishable of waste; and also where after the said grant and lease the said first tenants of the said lands and tenements take the profits at the time of the waste done, to their own proper use. (11 Hen. 6, ch. 5, § 1, 1433; Kilty's Rep. 227; Alex. Br. Stat. 243; Comp. Stat. D.C., 320, § 26; 1973 Ed., § 45-1303.)

#### § 45-1204. Joint tenant or tenant in common against co-tenant.

Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of partition may have said waste charged against the share of the cotenant committing the same. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1622; 1973 Ed., § 45-1304.)

**The term "waste"** when applied to a tenant in common means any action which goes to the destruction or permanent injury of the property held in common. Moore v. Moore, 120 WLR 2393 (Super. Ct. 1992).

**Duty to repair.** — A tenant in common who is in sole possession of common property has a duty to his cotenant to preserve the property by making all necessary, ordinary repairs, but this duty does not extend to extraordinary repairs or the substitution of new structures resulting

from normal decay. Moore v. Moore, 120 WLR 2393 (Super. Ct. 1992).

A cotenant's duty to repair is limited, in that the costs of the repair must not exceed the income produced by the property or its imputed rental value. Moore v. Moore, 120 WLR 2393 (Super. Ct. 1992).

Plaintiff failed to show that the property's deteriorated condition was a result of defendant's inaction. Moore v. Moore, 120 WLR 2393 (Super. Ct. 1992).

CHAPTER 13. OWNERSHIP BY ALIENS.

Sec.

- 45-1301. Ownership of real estate by aliens.  
45-1302. Ownership of legations or residences

by representatives of foreign governments.

**§ 45-1301. Ownership of real estate by aliens.**

The Act entitled "An Act to better define and regulate the rights of aliens to hold and own real estate in the territories," approved March 2, 1897 (48 U.S.C. §§ 1501-1507), be, and the same is hereby, amended so as to extend to aliens the same rights and privileges concerning the acquisition, holding, owning, and disposition of real estate in the District of Columbia as by that Act are conferred upon them in respect of real estate in the territories of the United States. All laws and parts of laws so far as they conflict with the provisions of this section are hereby repealed. (Feb. 23, 1905, 33 Stat. 733, ch. 733; 1973 Ed., § 45-1501.)

**Application of 48 U.S.C. §§ 1501-1507.** — Sections 1501-1507 of Title 48, United States Code, although not originally applicable to the District of Columbia, were made applicable thereto by this section, and all laws or parts of

laws so far as they conflicted with said §§ 1501-1507 were superseded. *Larkin v. Washington Loan & Trust Co.*, 31 F.2d 635 (D.C. Cir.), cert. denied, 279 U.S. 867, 49 S. Ct. 481, 73 L. Ed. 1004 (1929).

**§ 45-1302. Ownership of legations or residences by representatives of foreign governments.**

An Act entitled "An Act to restrict the ownership of real estate in the territories to American citizens, and so forth," approved March 3, 1887, be so amended that the same shall not apply to or operate in the District of Columbia, so far as relates to the ownership of legations, or the ownership of residences by representatives of foreign governments, or attaches thereof. (Mar. 9, 1888, 25 Stat. 45, ch. 30; 1973 Ed., § 45-1505.)

**CHAPTER 13A. OWNERSHIP BY NONRESIDENTS.**

Sec.

45-1311. Resident agent required for care and maintenance of vacant property.

**§ 45-1311. Resident agent required for care and maintenance of vacant property.**

Any person who is the owner of vacant property in the District of Columbia and who is not a resident of the District of Columbia must appoint or employ an agent who is a resident of the District of Columbia. This person shall be authorized by the owner and shall be responsible for the care and maintenance of the property. The owner shall notify the Director of the Department of Finance and Revenue of the appointment of the agent and of any change in the agent or in the address of the agent. Any owner of vacant property in the District of Columbia found to be in violation of this section shall be subject to a fine of \$50. (Mar. 10, 1983, D.C. Law 4-205, § 5, 30 DCR 188.)

**Legislative history of Law 4-205.** — Law 4-205, the “Summary Abatement of Life-or-Health Threatening Conditions Act of 1982,” was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The

Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

## CHAPTER 14. LANDLORD AND TENANT.

Sec.

- 45-1401. Notice to quit — Unnecessary with lease for certain term; landlord's right to immediate possession.
- 45-1402. Same — Month to month or quarter to quarter tenancy; expiration of notice.
- 45-1403. Notice of termination — Tenancies at will.
- 45-1404. Same — Tenancies by sufferance; apportionment of rent.
- 45-1405. Notice not to be recalled without consent; effect of expiration of notice.
- 45-1406. Service of notice to quit.
- 45-1407. Refusal to surrender possession; double rent.
- 45-1408. Parties may agree to alternate notice provisions; waiver.
- 45-1409. Recovery of real and personal property leased together.
- 45-1410. Action in ejectment — When proper.
- 45-1411. Same — Claims for arrears of rent, double rent, and waste; jurisdiction of court; money judgment.
- 45-1412. Consolidation of actions for arrears of rent and possession.
- 45-1413. Landlord's lien for rent — Time of existence.
- 45-1414. Same — How enforced.
- 45-1415. Same — When attachment issuable; executing officer's power of entry.
- 45-1416. Same — Property subject to lien not to be executed on by another without payment of rent due; when rent in arrears exceeds 3 months.
- 45-1417. Distress not unlawful and party making it not trespasser ab initio because of irregularity; special damages recoverable; costs; tender of amends defeats recovery.
- 45-1418. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.
- 45-1419. Representatives of life tenant may

Sec.

- recover proportion of rent from under-tenant.
- 45-1420. Action in debt may be brought for rent in arrears under lease or demise for life.
- 45-1421. Action by landlord for use and occupation of property where no deed; parol agreement as evidence of quantum of damages.
- 45-1422. Leases under control of mentally handicapped — Surrender and renewal; committee or guardian; court order.
- 45-1423. Same — Lease pursuant to provisions of § 45-1422 valid.
- 45-1424. Same — Money received for renewal paid to guardian for benefit of handicapped; characterization of money at death of handicapped.
- 45-1425. Lease held by infant or mentally handicapped — Surrender and renewal; guardian or committee; court order.
- 45-1426. Same — Costs of renewal chargeable to estate of infant or handicapped or deemed charge upon leasehold.
- 45-1427. Same — New leases to be of same nature and subject to same liabilities as surrendered leases.
- 45-1428. Same — Renewed lease valid.
- 45-1429. Surrender for new lease good without surrender of underleases; underleases continue unaffected; all rights and remedies to continue.
- 45-1430. Grant or assignment of reversion of premises or by lessee not to affect rights or duties under lease.
- 45-1431. Grants of remainders, reversions, and rents good without attornment; payment of rent to grantor without notice valid.
- 45-1432. Fraudulent attornment void; possession not changed by such attornment; limitation on scope of provisions.

**§ 45-1401. Notice to quit — Unnecessary with lease for certain term; landlord's right to immediate possession.**

When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1218; 1973 Ed., § 45-901.)

**Cross references.** — As to prohibitions against alterations to units after notice to vacate, see §§ 5-525 to 5-528.

As to proceedings in ejectment, see § 16-1110.

**Section conflicts with rent control regulations.** — This section and § 45-1404 conflict with rent control regulations governing eviction procedures, and therefore, being first enacted, yield to the more recently enacted rent control regulations. *Jack Spicer Real Estate, Inc. v. Gassaway*, App. D.C., 353 A.2d 288 (1976).

**Notice provisions in this section are superseded by notice provisions in § 45-2551** in requiring written notice to quit in cases where a lease for a definite term has come to an end. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Tenant's right to remain on landlord's premises is dependent on payment of rent.** — *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

**Inability to pay is no defense to possessory action.** — Inability to pay rent because of poverty or lack of funds is not a defense to a possessory action based on nonpayment. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

**Lessee held not entitled to 30-day notice to vacate.** — See *Thayer v. Brainerd*, App. D.C., 47 A.2d 787 (1946); *Bell v. Westbrook*, App. D.C., 50 A.2d 264 (1946); *Williams v. John S. Donohue & Sons*, App. D.C., 68 A.2d 239 (1949).

Where the tenant is merely continuing in possession after expiration of the lease against the will of the landlord, without payment of rent, the tenant is not entitled to notice to quit. *Nickles v. Sullivan*, App. D.C., 97 A.2d 920 (1953).

**Waiver of right to receive written notice.** — The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Effect of D.C. Law 6-10 on duration of residential tenancies.** — Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the

nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the landlord wishes to retake possession for one of the reasons specified in § 45-2551. In all cases save (1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (Chapter 25 of this title). Thus, in effect, the Act creates residential tenancies of indefinite duration. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Proceedings in Landlord and Tenant Branch of Superior Court are of summary nature,** and time is of the essence. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

**Summary action where tenant fails to comply with protective order.** — If the tenant in a landlord-tenant controversy fails to comply with an order for protective payments, the trial court may dispose of the action on the merits without a hearing on the merits. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

**Nature of protective order.** — The protective order constitutes a considered judicial attempt to balance the equities and to accommodate the competing considerations inherent in landlord-tenant controversies. *Mahdi v. Poretsky Mgt., Inc.*, App. D.C., 433 A.2d 1085 (1981).

**Retaliatory eviction.** — Where the landlord had an established policy of allowing tenants to remain as month-to-month tenants after the expiration of a fixed term of lease, and where the landlord abandoned that established policy with respect to 1 tenant who had just been elected president of the tenants' association, the tenant was entitled to present evidence, in defense of a possessory action, to demonstrate that the landlord was engaged in a retaliatory eviction notwithstanding this section. *Golphin v. Park Monroe Assocs.*, App. D.C., 353 A.2d 314 (1976).

**Cited in** *Alpert v. Wolf*, App. D.C., 73 A.2d 525 (1950); *Keuroglian v. Wilkins*, App. D.C., 88 A.2d 581 (1952); *Davis v. Bruner*, App. D.C., 441 A.2d 992 (1982).

## § 45-1402. Same — Month to month or quarter to quarter tenancy; expiration of notice.

A tenancy from month to month, or from quarter to quarter, may be terminated by a 30 days notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such

tenancy commenced to run. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1219; 1973 Ed., § 45-902.)

**Cross references.** — As to prohibition against alterations to units after notice to vacate, see §§ 5-525 to 5-528.

**Purpose of this section** respecting tenants' notice of intent to vacate rented premises is not to penalize the tenant but to give the opportunity to the landlord to find a new tenant, and where the failure to give notice results in no loss to the landlord, due to reletting, an additional month's rent would penalize the tenant and unjustly enrich the landlord. *First Nat'l Realty Corp. v. Oliver*, App. D.C., 134 A.2d 325 (1957).

**Violation of lease obligation.** — This section does not apply when a tenant protected by § 45-2551 allegedly violates a lease obligation. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

The merger of a notice to cure and a notice to quit into one required notice — the "notice to cure or vacate" — under the 1980 and 1985 Rental Housing Acts leaves no room for this section's timing requirement when § 45-2551(b) applies to the termination of a month-to-month tenancy. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

A landlord may file an action for possession of leased residential premises alleging violation of an obligation of tenancy, other than nonpayment of rent, if the tenant has not corrected the violation within 30 days after receiving notice to correct the violation or vacate, without regard to the timing requirement in this section. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

**Computation of time given in notice.** — Sundays and half holidays on Saturdays are not excluded in computing the time given in the notice. *McCoy v. Duehay*, 279 F. 1001 (D.C. Cir. 1922).

A notice dated and served July 1st, requiring the tenant to vacate on July 31st, is insufficient, because by the rule of interpretation, excluding the first day and including the last, there was not a full 30 days. *Merritt v. Thompson*, 289 F. 631 (D.C. Cir. 1923).

In fixing the time when a landlord's notice to tenant to quit the leased premises expires, the law does not take cognizance of fractions of a day or minute. *Young v. Baugh*, App. D.C., 35 A.2d 242, appeal dismissed, App. D.C., 39 A.2d 478 (1944).

With respect to the 30-day notice of termination of a month to month tenancy, that midnight lying midway between the last day of the terminal month and the first day of the new month must be the termination of the 30th day of notice. *Zoby v. Kosmadakes*, App. D.C., 61 A.2d 618 (1948).

**Notice to be in writing.** — This section and §§ 45-1403 and 45-1404 require that any notice be "in writing"; they make no reference to oral notification by either the landlord or the tenant. *Burns v. Harvey*, App. D.C., 524 A.2d 35 (1987).

**Notice of more than 30 days valid.** — A notice to quit which describes the property in the same manner as in defendant's lease, and which gives more than 30 days notice, is sufficient. *Bliss v. Duncan*, 44 App. D.C. 93 (1915).

Notice is not bad because it gives 31 days notice. *Young v. Baugh*, App. D.C., 35 A.2d 242, appeal dismissed, App. D.C., 39 A.2d 478 (1944).

Tenant may be given more than 30 days notice of termination of a month to month tenancy without affecting the validity of notice. *Zoby v. Kosmadakes*, App. D.C., 61 A.2d 618 (1948).

**Cure within notice period.** — When a cure is effectuated within 30 days, the plain language of the statute precludes recovery of possession for the violation of the tenancy cited in the notice and ends the effectiveness of the notice. *McGinty v. Dickson*, 117 WLR 1109 (Super. Ct. 1989).

**Expiration date of notice to quit.** — A notice of termination of tenancy from month to month cannot be made to expire at a time other than the end of the month, notwithstanding the provisions of § 45-1408. *Dorado v. Loew's, Inc.*, App. D.C., 88 A.2d 188 (1952).

The validity of a notice to quit a month to month tenancy does not depend upon whether the notice expires on a rent day, but upon whether it expires on the day of the month from which the tenancy began to run. *Ourisman Chevrolet, Inc. v. Zimmelman*, App. D.C., 91 A.2d 709 (1952).

A lease provision which states that the first term of the lease "shall commence on the 18th day and continue through the last day of January" and that the "lease shall be automatically renewed for successive terms of 1 month each at the rent of \$36 per month" is not unreasonably ambiguous as to the date of commencement of the tenancy, but evidences an intent to create 2 separate terms of tenancy, the first term expiring the last day of January, with a new term automatically commencing on February 1st and continuing on a month-to-month basis; therefore, notice to quit which expired on June 30th and required tenant to vacate on or before July 1st sufficiently complies with this section. *District of Columbia Dep't of Hous. Community Dev. v. Pitts*, App. D.C., 370 A.2d 1377 (1977).

**Successive notices must be given unless continuing waiver.** — Notice to quit must be given in each successive suit for possession based upon the nonpayment of rent for different periods of time unless landlord establishes a continuing waiver of notice. *Nash v. Walker*, 112 WLR 1617 (Super. Ct. 1984).

**Receipt of rent for new term is waiver.** — The receipt by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice. *Byrne v. Morrison*, 25 App. D.C. 72 (1905); *Shapiro v. Christopher*, 195 F.2d 785 (D.C. Cir. 1952).

Whether the landlord's agent had authority to accept rent paid after the service of notice to quit would be immaterial unless the payment was for rent beyond the termination date of the notice. *Moncure v. Curry*, App. D.C., 42 A.2d 143 (1945).

**Unless received from permissive occupant.** — A party storing merchandise upon the premises by permission but without any lease or agreement as to the payment of rent is only a permissive occupant and mere licensee, and, as such, is not entitled to the benefit of the rule providing that when the landlord gives notice to quit and later accepts rent for a new term or a part thereof, he thereby waives his right to demand possession under the notice. *Shapiro v. Christopher*, 195 F.2d 785 (D.C. Cir. 1952).

**Or without intent of landlord to waive notice.** — The fact that a banking institution which collected the rent for the landlord accepted and deposited a rent payment made by the tenant for a new period after the expiration of the 30-day notice to quit, did not indicate an intention by landlord to waive such notice. *Rhodes v. United States*, App. D.C., 310 A.2d 250 (1973).

**But receipt of rent for current term is not.** — The receipt of rent by the landlord for the current month, pending the notice to quit, cannot have the effect of waiving the landlord's right to demand possession under that notice. *Byrne v. Morrison*, 25 App. D.C. 72 (1905).

The acceptance of rent by a landlord from month to month tenant only for a period during the running of notice to quit is not a waiver of such notice. *Pointer v. Shepard*, App. D.C., 49 A.2d 659 (1946).

Landlord's receipt of rent already in arrears merely obviates the necessity of entering judgment for that amount, and in no way affects the landlord's right to judgment for possession. *Shapiro v. Christopher*, 195 F.2d 785 (D.C. Cir. 1952).

Acceptance of rent to November 30th is not a waiver of a notice to quit expiring on December 1st. *McCoy v. Duehay*, 279 F. 1001 (D.C. Cir. 1922).

Where a notice to quit served on November 27, 1944, on a monthly tenant whose tenancy

ran from the first day of the month, would expire on January 1, 1945, acceptance of rent to January 1, 1945, after service of notice, would not waive or invalidate such notice. *Moncure v. Curry*, App. D.C., 42 A.2d 143 (1945).

**Waiver of notice by surrender and acceptance of premises.** — Whether there has been a surrender of the premises by a tenant under a tenancy from month to month and an unqualified acceptance by the landlord such as to terminate the tenancy and relieve the tenant from further liability for rent is generally a question of fact, and the mere acceptance of the key and reentry for the purpose of rerenting does not conclusively establish, as a matter of law, that the tenant is relieved from further rent. *Thomas D. Walsh, Inc. v. Moore*, App. D.C., 141 A.2d 754 (1958).

**Proof of waiver of right to notice.** — If landlord alleges in complaint for possession that tenant has waived the right to a notice to quit, and tenant contests that allegation, the landlord must affirmatively prove either that there has been a waiver or that notice has been served. *Jamison v. S & H Assocs.*, App. D.C., 487 A.2d 619 (1985); *Haynes v. Logan*, App. D.C., 600 A.2d 1074 (1991).

**Waiver by estoppel.** — A landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1st or agree to a rent increase, waived the requirement of 30 days written notice and is estopped to rely on this section and is not entitled to rent for September, although the tenant only gave oral notice on August 22nd and did not comply with requirements of this section. *Sklar v. Hightower*, App. D.C., 342 A.2d 57 (1975).

**A landlord is not required to specify the date of expiration of notice** in a notice to quit premises leased from month to month. *Young v. Baugh*, App. D.C., 35 A.2d 242, appeal dismissed, App. D.C., 39 A.2d 478 (1944).

**Landlord bound by date given in notice.** — While the landlord is not required to specify in the notice the date of the termination of the notice, having done it he is bound by that date. *Merritt v. Thompson*, 289 F. 631 (D.C. Cir. 1923).

**Notice to tenant as notice to sublessee.** — Where there was no written assignment of the rental agreement with tenant to corporate sublessee, and the landlord had never accepted the corporation as a tenant, service of notice on the tenant was sufficient to terminate the lease as well as the sublease expressly made subject thereto. *Haje's, Inc. v. Wire*, App. D.C., 56 A.2d 158 (1947).

**Notice held valid.** — See *Klein v. Miles*, App. D.C., 35 A.2d 243 (1944); *Gordon v. Tino*, App. D.C., 50 A.2d 593 (1946); *Wittek v. United States*, App. D.C., 54 A.2d 747 (1947), modified on other grounds, 171 F.2d 8 (1948), aff'd, 337

U.S. 346, 69 S. Ct. 1108, 93 L. Ed. 1406 (1949); Wynn v. Washington, App D.C., 53 A.2d 275 (1947); Alpert v. Wolf, App. D.C., 73 A.2d 525 (1950); Miller v. United States, App. D.C., 77 A.2d 171 (1950); Conrad v. Pisner, App. D.C., 79 A.2d 780 (1951).

**Cited** in Knowles v. Mosher, App. D.C., 45 A.2d 755 (1946); United States v. Wittek, App. D.C., 48 A.2d 805 (1946); Stoner v. Humphries, App. D.C., 87 A.2d 528 (1952); Dunnington v. Thomas E. Jarrell Co., App. D.C., 96 A.2d 274 (1953); Rudder v. United States, 226 F.2d 51 (D.C. Cir. 1955); Cavalier Apts. Corp. v.

McMullen, App. D.C., 153 A.2d 642 (1959); Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016, 89 S. Ct. 618, 21 L. Ed. 2d 560 (1969); Diamond Hous. Corp. v. Robinson, App. D.C., 257 A.2d 492 (1969); Watson v. Kotler, App. D.C., 264 A.2d 141 (1970); Anderson v. William J. Davis, Inc., App. D.C., 553 A.2d 648 (1989); Double H Hous. Corp. v. Moss, 118 WLR 1473 (Super. Ct. 1990); Cooper v. Taft, 119 WLR 981 (Super. Ct. 1991); Lee v. District of Columbia, 122 WLR 1957 (Super. Ct. 1994).

## § 45-1403. Notice of termination — Tenancies at will.

A tenancy at will may be terminated by 30 days notice in writing by either landlord or tenant. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1220; 1973 Ed., § 45-903.)

**Cross references.** — As to prohibition against alterations to units after notice to vacate, see §§ 5-525 to 5-528.

**Intent of Congress.** — Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. Thornhill v. Atlantic Life Ins. Co., 70 F.2d 846 (D.C. Cir. 1934).

**Person possessing foreclosed property is tenant at will.** — Where real property is sold under foreclosure of a deed of trust, the grantor of deed of trust, or any one in possession claiming under him, becomes a tenant at will of purchaser at foreclosure and is entitled to 30 days notice to quit. Thompson v. Mazo, App. D.C., 245 A.2d 122 (1968).

**Residents of shelter for homeless were not tenants** as defined in § 45-1503 (expired April 30, 1985, now see § 45-2503), and not entitled to the 30-day notice to quit in this section and § 45-1404, where the government never sought nor received any rent for the use of the shelter. Robbins v. Reagan, 616 F. Supp. 1259 (D.D.C.), aff'd as modified, 780 F.2d 37 (D.C. Cir. 1985).

**Notice to be in writing.** — This section and §§ 45-1402 and 45-1404 require that any notice be "in writing"; they make no reference to oral notification by either the landlord or the tenant. Burns v. Harvey, App. D.C., 524 A.2d 35 (1987).

**Eviction of a tenant at will without the statutory 30-day notice is unlawful** and justifies award of damages. Northeast Auto Wreckers, Inc. v. Sanford, App. D.C., 43 A.2d 292 (1945).

**Receipt of rent for new term after notice.** — When a landlord gives notice to quit and later accepts rent for a new term or part thereof, he thereby waives his right to demand possession under the notice, but a landlord's receipt of rent already in arrears merely obviates the necessity of entering judgment for that amount and in no way affects the landlord's right to judgment for possession. Shapiro v. Christopher, 195 F.2d 785 (D.C. Cir. 1952).

**Cited** in Nicholas v. Howard, App. D.C., 459 A.2d 1039 (1983); Administrator of Veterans Affairs v. Valentine, App. D.C., 490 A.2d 1165 (1985); Merriweather v. District of Columbia Bldg. Corp., App. D.C., 494 A.2d 1276 (1985); Anderson v. William J. Davis, Inc., App. D.C., 553 A.2d 648 (1989); Snowden v. Benning Heights Coop., App. D.C., 557 A.2d 151 (1989).

## § 45-1404. Same — Tenancies by sufferance; apportionment of rent.

A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the 30th day after the day of the service of the notice. If such notice expires before any periodic instalment of rent falls due, according to the terms of the tenancy, the landlord

shall be entitled to a proportionate part of such instalment to the date fixed for quitting the premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1221; 1973 Ed., § 45-904.)

**Cross references.** — As to prohibition against alterations to units after notice to vacate, see §§ 5-525 to 5-528.

**Section conflicts with rent control regulations.** — This section and § 45-1401 conflict with rent control regulations governing eviction procedures, and therefore, being first enacted, yield to the more recently enacted rent control regulations. *Jack Spicer Real Estate, Inc. v. Gassaway*, App. D.C., 353 A.2d 288 (1976).

**Purpose of notice.** — The purpose of a 30 days notice to quit is to terminate a tenancy, and upon the expiration of the time fixed in the notice to quit, the tenancy no longer exists. *Rubenstein v. Swagart*, App. D.C., 72 A.2d 690 (1950).

**Notice to be in writing.** — To terminate a tenancy by sufferance, notice in writing must be given. *Beyer v. Smith*, 32 F.2d 423 (D.C. Cir.), cert. denied, 280 U.S. 557, 50 S. Ct. 17, 74 L. Ed. 613 (1929).

This section and §§ 45-1402 and 45-1403 require that any notice be "in writing"; they make no reference to oral notification by either the landlord or the tenant. *Burns v. Harvey*, App. D.C., 524 A.2d 35 (1987).

**Notice need not contain reason.** — To terminate a tenancy by sufferance, the landlord must give the tenant a 30-day notice to vacate, but such notice does not need to assign any reason. *Warthen v. Lamas*, App. D.C., 43 A.2d 759 (1945).

**But notice invalid for failure to comply with rent control regulations.** — A landlord's 30-day notice to quit did not comply with requirements of the rent control regulations where the stated reason for demanding possession was the expiration of the tenant's lease, and no showing was made that eviction could be had on some basis authorized by the regulation. *Jack Spicer Real Estate, Inc. v. Gassaway*, App. D.C., 353 A.2d 288 (1976).

**Date notice given.** — Notice to quit given on July 31st to tenants whose lease expired on August 15th and who became tenants by sufferance thereafter was proper and, therefore, can serve as the basis for a possessory action. *Brown v. Young*, App. D.C., 364 A.2d 1171 (1976).

**Language used in notice.** — A notice served on the tenant personally, wherein he is described as "Wm." instead of Richard, and giving him the required length of time in which to vacate, is sufficient under this section. *Creel v. Adams*, 265 F. 456 (D.C. Cir. 1920).

A notice to terminate a tenancy by sufferance

is sufficient which requires the tenant to quit "at the end of 30 days from the date of service" upon him, instead of on the 30th day thereafter. *Hayden v. Filippone*, 278 F. 329 (D.C. Cir. 1922).

A notice to the tenant by sufferance to quit addressed to "Globe Clothing Shop" was not defective for failure to designate the tenant as a corporation, partnership, or individual, where the notice was personally served on the tenant and the tenant was not misled by the notice. *Globe Clothing Shop, Inc. v. Skolnick*, App. D.C., 50 A.2d 271 (1946).

**Receipt of rent for new term is waiver.** — The receipt of rent by a landlord for a new term or parts thereof after service of a notice to quit amounts to a waiver of his rights to demand possession under the notice. *Christopher v. Shapiro*, App. D.C., 76 A.2d 781 (1950), modified on other grounds, 195 F.2d 785 (D.C. Cir. 1952).

Although the tenants informed landlord's office on September 22nd that they would vacate the apartment within 30 days, and also wrote the landlord stating that they wished to move by October 1st, where the tenants paid and landlord accepted rent for October on October 4th, even if the notice was valid when given, neither the landlord nor tenants were bound by it. *Williams v. Tencher-Walker, Inc.*, App. D.C., 125 A.2d 58 (1956).

**Unless received from permissive occupant.** — A party storing merchandise upon the premises by permission but without any lease or agreement as to the payment of rent is only a permissive occupant and mere licensee, and, as such, is not entitled to the benefit of the rule providing that when a landlord gives notice to quit and later accepts rent for a new term or a part thereof, he thereby waives his right to demand possession under the notice. *Shapiro v. Christopher*, 195 F.2d 785 (D.C. Cir. 1952).

**But receipt of rent in arrears is not.** — When a landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates the necessity of entering judgment for that amount and in no way affects the landlord's right to judgment for possession. *Shapiro v. Christopher*, 195 F.2d 785 (D.C. Cir. 1952).

Acceptance of rent from the lessee by the purchaser and continued possession of premises by lessee after the 90-day period in notice to quit had run did not revive the lease and did not amount to a waiver of cancellation of lease

by purchaser, as the acceptance of rent after the lease was cancelled was for use and occupancy during holdover period. Fisher v. Parkwood, Inc., App. D.C., 213 A.2d 757 (1965).

**Liability for rent following surrender without notice.** — Where the parties entered into an oral agreement for the rental of the garage at a monthly rate, and the tenant vacated the garage on the 1st day of August without giving any written notice of his intention to do so, in the absence of any waiver by the landlord, the tenant was liable for rent for the entire month of August. Miller v. Plumley, App. D.C., 77 A.2d 173 (1950).

**Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance,** and statutes providing the manner of terminating such tenancies are controlling. Cavalier Apts. Corp. v. McMullen, App. D.C., 153 A.2d 642 (1959).

**“Tenant by sufferance” construed.** — A tenant who remains in possession paying rent after expiration of written lease becomes a “tenant by sufferance.” Hampton v. Mott Motors, Inc., App. D.C., 32 A.2d 247 (1943); Friedman v. Sherman, App. D.C., 74 A.2d 57 (1950); Lake v. Angelo, App. D.C., 163 A.2d 611 (1960).

Where a 1-year lease of rooming house gave the lessor or his assignee the right to terminate the lease if the property was sold during the term of the lease by giving the lessee 90 days notice, it unambiguously provided for 90 days notice only during the year that the lease was in effect, and the tenant by holding over and paying rent after the lease expired became a “tenant by sufferance” and was entitled only to the usual 30-day notice. Arsenault v. Angle, App. D.C., 43 A.2d 709 (1945).

Where a landlord gave the tenant permission to install an air cooling system for leased premises and thereafter gave the tenant “permission to use” certain space not covered by the lease for purpose of installing parts of the air cooling machinery, the language used did not create a “tenancy by sufferance” so as to require the landlord to give the tenant a 30-day notice to quit after expiration of the lease with respect to the space permissively used. Thayer v. Brainerd, App. D.C., 47 A.2d 787 (1946).

Under § 45-220, a tenant who rented pre-

mises under an oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time pursuant to this section. Cavalier Apts. Corp. v. McMullen, App. D.C., 153 A.2d 642 (1959).

**Roomer not a tenant within this section.** — A roomer, although considered a tenant under other District statutes, is not a tenant for the purposes of this section, and is not entitled to the benefit of this section. Tamamian v. Gabbard, App. D.C., 55 A.2d 513 (1947).

A roomer is not considered to be a tenant, and thus subject to eviction by summary proceeding. Levy v. Parks, App. D.C., 157 A.2d 462 (1960).

**Residents of shelter for homeless were not tenants** as defined in § 45-1503 (expired April 30, 1985, now see § 45-2503), and not entitled to the 30-day notice to quit in § 45-1403 and this section, where the government never sought nor received any rent for the use of the shelter. Robbins v. Reagan, 616 F. Supp. 1259 (D.D.C.), aff'd as modified, 780 F.2d 37 (D.C. Cir. 1985).

**Servants were not tenants entitled to 30-day notice.** — Where maintenance men did not pay rent, did not have a lease, and were allowed to occupy the employer-landowner's apartment only as an incident to the services they provided, they were servants, not tenants, and thus were not entitled as tenants to 30-days' notice to quit. Anderson v. William J. Davis, Inc., App. D.C., 553 A.2d 648 (1989).

**Notice held valid.** — See Weaver v. Koester, 294 F. 1011 (D.C. Cir. 1924); Sandler v. Wertlieb, App. D.C., 60 A.2d 222 (1948).

**Cited** in Turner v. Mertz, 3 F.2d 348 (D.C. Cir. 1925); Westchester Apts., Inc. v. Keroes, App. D.C., 32 A.2d 869 (1943); Knowles v. Mosher, App. D.C., 45 A.2d 755 (1946); William J. Davis, Inc. v. Slade, App. D.C., 271 A.2d 412 (1970); Robinson v. Diamond Hous. Corp., 463 F.2d 853 (D.C. Cir. 1972); Smith v. Town Ctr. Mgt. Corp., App. D.C., 329 A.2d 779 (1974); Oliver T. Carr Mgt., Inc. v. National Delicatessen, Inc., App. D.C., 397 A.2d 914 (1979); Merriweather v. District of Columbia Bldg. Corp., App. D.C., 494 A.2d 1276 (1985); Cormier v. McRae, App. D.C., 609 A.2d 676 (1992).

## § 45-1405. Notice not to be recalled without consent; effect of expiration of notice.

Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his

intention to quit. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1222; June 30, 1902, 32 Stat. 542, ch. 1329; 1973 Ed., § 45-905.)

**The words “as aforesaid”** refer to §§ 45-1402, 45-1403 and 45-1404, which provide that a tenant or a landlord can terminate a tenancy by providing “notice in writing.” Once one party has provided such written notice, this section merely provides that the other party need not also provide written notice already received. Oral notice is not mentioned in any of these provisions. *Burns v. Harvey*, App. D.C., 524 A.2d 35 (1987).

**Waiver of right to receive written notice.** — The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Withdrawal provision applicable to written, not oral, notice.** — This section provides only that a written notice, as opposed to oral notice, given by either landlord or tenant may not be withdrawn without the consent of

the other. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Effect of D.C. Law 6-10 on duration of residential tenancies.** — Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the landlord wishes to retake possession for one of the reasons specified in § 45-2551. In all cases save (1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (Chapter 25 of this title). Thus, in effect, the Act creates residential tenancies of indefinite duration. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

## § 45-1406. Service of notice to quit.

Every notice to the tenant to quit shall be served in English and Spanish upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises. If the notice is posted on the premises, a copy of the notice shall be mailed first class U.S. mail, postage prepaid, to the premises sought to be recovered, in the name of the person known to be in possession of the premises, or if unknown, in the name of the person occupying the premises, within 3 calendar days of the date of posting. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1223; 1973 Ed., § 45-906; June 29, 1984, D.C. Law 5-90, § 3, 31 DCR 2537.)

**Cross references.** — As to prohibition against alterations to units after notice to vacate, see §§ 5-525 to 5-528. As to evictions, see § 45-2551.

**Legislative history of Law 5-90.** — Law 5-90, the “Eviction Procedures Act of 1984,” was introduced in Council and assigned Bill No. 5-134, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-131 and transmitted to both Houses of Congress for its review.

**Purpose.** — This section ensures that Spanish-speaking residential tenants will not be evicted following the receipt of a notice which is incomprehensible to them and that they will be

given a full opportunity to assert their rights in court. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

**Requirement that a notice to quit be served in both Spanish and English is required for all residential tenants.** *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

**This section applies to commercial as well as to residential tenancies.** *Ontell v. Capitol Hill E.W. Ltd. Partnership*, App. D.C., 527 A.2d 1292 (1987).

**Construction with § 45-2594.** — This section is specifically intended to govern the service of notices to quit, whereas former § 45-1595 (now expired and replaced by § 45-2594) was a more general provision affecting the service of “any information or document,” therefore, this section, which specifically deals

with service of a notice to quit, is the proper statute to apply in such situations. *Graham v. Berstein*, App. D.C., 527 A.2d 736 (1987).

**Notice in English only.** — Generally, there is a judicial policy to invalidate a notice to quit when the manner of serving the notice is defective, despite a tenant's actual receipt of the notice. However, the court will not invalidate an otherwise valid notice to quit for being written only in English when the notice was served on a commercial tenant who alleges no prejudice from the failure to translate the notice into Spanish. *Ontell v. Capitol Hill E.W. Ltd. Partnership*, App. D.C., 527 A.2d 1292 (1987).

**Waiver.** — Judicial admission, which asserts that a notice was received and understood, though served only in English, can similarly act as a waiver of requirement that a notice to quit be served in English and Spanish. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

**§ 45-2551 provides sanction for violation of this section.** — This section is subsumed in § 45-2551 and that section provides a specific enforcement provision that serves as a sanction for a violation of this section. *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988).

**Degree of exactness required.** — The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. *Craig v. Heil*, App. D.C., 47 A.2d 871 (1946); *Custis v. Klein*, App. D.C., 177 A.2d 268 (1962).

**Service according to dictates of this section mandatory.** — Though Chapter 16 of this title incorporates additional safeguards into the notice to quit, the notice to quit must still be served according to the clear dictates of this section. *Jones v. Brawner Co.*, App. D.C., 435 A.2d 54 (1981), (decision prior to 1984 amendment).

**Service by any person is sufficient**, so long as the tenant receives the notice in time to allow the statutory period to vacate. *Hardebeck v. Hamilton*, 268 F. 703 (D.C. Cir. 1920).

There is nothing in this section which requires that the landlord in person, or an officer, shall make the service. It may be made by any person acting for the landlord. *Hardebeck v. Hamilton*, 268 F. 703 (D.C. Cir. 1920); *Glenn v. Mindell*, App. D.C., 74 A.2d 835 (1950).

Service of notice to quit upon the tenant need not be made by the landlord in person but may be made by any person acting for him, so long as the tenant receives notice in time to allow him the statutory period to vacate. *Craig v. Heil*, App. D.C., 47 A.2d 871 (1946).

**Service by registered mail.** — Landlord could select the Postal Service as his delivering agent for service of a notice to quit upon tenant by the employment of registered mail, prescribing delivery to addressee only, with a demand for a return receipt, so long as such method

resulted in the notice being served personally upon the tenant. *Craig v. Heil*, App. D.C., 47 A.2d 871 (1946).

**Service by posting.** — Where several attempts were made to personally serve on tenant a notice to quit, service of notice was sufficient when the notice to quit was tacked on the door of the premises. *Lynch v. Bernstein*, App. D.C., 48 A.2d 467 (1946).

Service of notice to quit by the resident manager who knocked on the tenants' door but received no response and who slipped the notice, enclosed in an envelope, under the door, did not constitute "posting in a conspicuous place" as required by this section, and service of notice was defective. *Moody v. Winchester Mgt. Corp.*, App. D.C., 321 A.2d 562 (1974).

**Sliding notice under door insufficient service.** — Substituted service under this section may not be accomplished by sliding the notice under a tenant's door. *Jones v. Brawner Co.*, App. D.C., 435 A.2d 54 (1981), (decision prior to 1984 amendment).

**Substituted service of notice to quit is less favored** than delivery of the document to the tenant in person, and posting should be employed as a last resort. *Moody v. Winchester Mgt. Corp.*, App. D.C., 321 A.2d 562 (1974).

**Mailing copy of notice.** — This section requires the mailing of a letter only if the notice is posted on the premises. When the notice has not been posted, there is nothing in the language or the purpose of the section which would give effect to any mailing at all. *Ayers v. Landow*, App. D.C., 666 A.2d 51 (1995).

**Service on person other than tenant.** — A notice delivered by the landlord to the tenant's son, 17 years of age, at her request, and where it is then delivered to her by the boy, is served substantially in compliance with this section. *Hockman v. Shreve*, 269 F. 482 (D.D.C. 1920).

Where the landlord went to the rented dwelling and inquired for the month to month tenant, and, upon being told that she was not at home, delivered a 30-day notice to quit to an adult person who came to the door, there was good service of such notice. *Pointer v. Shepard*, App. D.C., 49 A.2d 659 (1946).

Deputy marshal was entitled to make the service upon the person obviously in charge of the premises, particularly when that person told him he was authorized by the tenant to accept service. *Rubenstein v. Swagart*, App. D.C., 72 A.2d 690 (1950).

**Different service requirements for notice to quit and notice to cure.** — Service of the notice to cure must be distinguished from the service requirements for a notice to quit. *Jones v. Brawner Co.*, App. D.C., 435 A.2d 54 (1981), (decision prior to 1984 amendment).

**Tenant entitled to single notice to cure or vacate prior to landlord's suit for pos-**

**session.** — A single notice to cure or vacate is all that a tenant is entitled to receive before a suit to recover possession may be brought by his or her landlord for a violation of the tenancy. *Cooley v. Suitland Parkway Overlook Tenants' Ass'n*, App. D.C., 460 A.2d 574 (1983).

**Refusal of service by tenant insufficient.** — Where the landlord personally handed the month to month tenant a 30-day notice to quit, there was good service notwithstanding the fact that the tenant, after reading the notice, stated she would not accept it and handed it back. *Pointer v. Shepard*, App. D.C., 49 A.2d 659 (1946).

**Service as condition precedent to suit for possession.** — Although service of notice to quit is not jurisdictional and can be waived,

it is a condition precedent to the landlord's suit for possession. *Moody v. Winchester Mgt. Corp.*, App. D.C., 321 A.2d 562 (1974).

Although landlord's failure to comply with the commands of this section did not prejudice tenant, judgment was in tenant's favor upon the ground that landlord failed to serve a notice to cure violations of tenant or vacate as required by this section. *Ayers v. Landow*, App. D.C., 666 A.2d 51 (1995).

**Cited** in *Lake v. Angelo*, App. D.C., 163 A.2d 611 (1960); *Fisher v. Parkwood, Inc.*, App. D.C., 213 A.2d 757 (1965); *Wilson v. John R. Pinkett, Inc.*, App. D.C., 265 A.2d 778 (1970); *Frank Emmet Real Estate, Inc. v. Monroe*, App. D.C., 562 A.2d 134 (1989); *McGinty v. Dickson*, 117 WLR 1109 (Super. Ct. 1989).

## § 45-1407. Refusal to surrender possession; double rent.

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1224; 1973 Ed., § 45-907.)

**Applicability of section.** — This section ostensibly applies to only that situation where the tenant has "given notice of intention to quit" and not where it was the landlord who gave notice to quit. *Horn & Hardart Co. v. National R.R. Passenger Corp.*, 659 F. Supp. 1258 (D.D.C. 1987), aff'd, 843 F.2d 546 (D.C. Cir.), cert. denied, 488 U.S. 849, 109 S. Ct. 129, 102 L. Ed. 2d 102 (1988).

**Statute does not preempt private contract.** — This section is a statutory remedy that may supplement but may not supplant the

intentions of private parties to a contract. There is no indication from the language in the statute that it was intended to preempt a private contract. *Horn & Hardart Co. v. National R.R. Passenger Corp.*, 659 F. Supp. 1258 (D.D.C. 1987), aff'd, 843 F.2d 546 (D.C. Cir.), cert. denied, 488 U.S. 849, 109 S. Ct. 129, 102 L. Ed. 2d 102 (1988).

**Cited** in *Paton v. Rose*, App. D.C., 205 A.2d 609 (1964); *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986); *Sanchez v. Eleven Fourteen, Inc.*, App. D.C., 623 A.2d 1179 (1993).

## § 45-1408. Parties may agree to alternate notice provisions; waiver.

Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1236; 1973 Ed., § 45-908.)

**A notice to quit is a condition precedent to the filing of an action by landlord to obtain premises from tenant but is not jurisdictional and may be waived when tenancy is created or at any later time.** *Morris v. Breaker*, App. D.C., 38 A.2d 632 (1944); *Craig v. Heil*, App. D.C., 47 A.2d 871 (1946).

**fense of failure to serve notice.** — In a landlord's action to recover the premises from the tenant where the tenant testified that she had waived service of a notice to quit, the tenant waived the defense of failure of the landlord to serve such notice. *Morris v. Breaker*, App. D.C., 38 A.2d 632 (1944).

**Where landlord fails to demonstrate**

**that the tenant has waived his statutory right to written notice to quit, the landlord is not entitled to possession.** Burns v. Harvey, App. D.C., 524 A.2d 35 (1987).

**Failure to agree to alternate notice provision as ground for eviction.** — Where the landlord gives the tenants, who had verbally leased property by the month, the statutory 30 days notice to vacate, the landlord is entitled to judgment of possession, notwithstanding that the reason for notice may have been the tenants' refusal to enter into a written lease containing a waiver of the right to the statutory notice to quit in event of certain breaches. Wilson v. John Pinkett, Inc., App. D.C., 265 A.2d 778 (1970).

**Alternate notice provision held valid.** — A provision of the lease that the tenant, if not in default, was entitled to not less than 30 days notice to vacate, which notice was to be given, in writing, at least 30 days before the tenancy was intended to be terminated, was a valid contract substitution for § 45-1402. Zoby v. Kosmadakes, App. D.C., 61 A.2d 618 (1948).

**Alternate notice provision held invalid.** — Under a lease "by the month" commencing on the 20th day of the month and providing that the lessee would quit the premises 24 hours after receiving notice to quit and that he would operate on a 24-hour notice to quit, waiving any and all other notices to quit, and that the lessor would rebate any rent paid in advance for the period after notice to quit, a 24-hour notice served on the 26th of the month was ineffective, and notice to be effective had to expire on the day of month from which tenancy commenced to run. Dorado v. Loew's, Inc., App. D.C., 88 A.2d 188 (1952).

**Waiver of notice held valid.** — See H.L. Rust Co. v. Drury, 68 F.2d 167 (D.C. Cir. 1933).

**Cited** in Klein v. Insurance Bldg., Inc., App. D.C., 46 A.2d 368 (1946); Zindler v. Buchanon, App. D.C., 61 A.2d 616 (1948); Diamond Hous. Corp. v. Robinson, App. D.C., 257 A.2d 492 (1969); Watson v. Kotler, App. D.C., 264 A.2d 141 (1970); Sklar v. Hightower, App. D.C., 342 A.2d 57 (1975); Double H Hous. Corp. v. Moss, 118 WLR 1473 (Super. Ct. 1990).

## § 45-1409. Recovery of real and personal property leased together.

Whenever real and personal property are leased together, as, for example, a house with furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, in the Superior Court of the District of Columbia, may have a judgment for recovery of the personality as well as the realty. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 167(1); 1973 Ed., § 45-909.)

**Cross references.** — As to possessory actions, see § 16-1501 et seq.

## § 45-1410. Action in ejectment — When proper.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, §§ 155(c)(1)(J), 167(2); 1973 Ed., § 45-910.)

**Cross references.** — As to possessory actions, see § 16-1501 et seq.

**Applicability.** — This section applies to commercial as well as residential tenancies.

Espenschied v. Mallick, App. D.C., 633 A.2d 388 (1993).

**Effect of statutory procedures on landlord and tenant rights.** — The landlord's

common-law right of self-help has been abrogated by exclusive statutory procedures for dispossessing a tenant, who has a right not to have his or her possession interfered with except by lawful process; and violation of the tenant's right gives rise to a cause of action in tort. Mendes v. Johnson, App. D.C., 389 A.2d 781 (1978).

**Jurisdiction of all ejectment proceedings in Superior Court.** — The intent of the Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in the Superior Court, even those brought by the United States. Herian v. United States, 363 F. Supp. 287 (D.D.C. 1973).

**Jurisdiction limited to actions by landlord.** — Jurisdiction of the court over summary suits to recover possession of real property under this section is limited explicitly to actions by the landlord against the tenant. Spruill v. Brooks, App. D.C., 68 A.2d 204 (1949).

**Landlord-tenant relationship is jurisdictional** under this section. Pollock v. Brown, App. D.C., 395 A.2d 50 (1978).

**Effect of successful possessory action.** — A landlord's possessory action, when decided in favor of landlord, determines finally as between the parties that there is a tenancy between the parties, that the lease between the parties is valid, and that rent is due and owing by the tenant, and thus for all practical purposes, a decision for the landlord determines by principle of res judicata all other matters at issue between the 2 parties. Atkins v. United States, App. D.C., 283 A.2d 204 (1971).

The issue of whether default judgment entered against tenant in landlord's suit for possession was conclusive as to the issues litigated and determined therein in any subsequent suit for rent involved the application of the doctrine of collateral estoppel rather than the doctrine of res judicata. Tutt v. Doby, 459 F.2d 1195 (D.C. Cir. 1972).

**Parties to action in ejectment.** — Where the tenant terminated his tenancy by notice acceptable to the landlord but the tenant's estranged wife remained in possession of the premises, the landlord's action to recover possession of premises was properly brought against the tenant and it was not necessary that the tenant's estranged wife, who was not a party to the lease, should be named as a defendant. Scott v. H.G. Smithy Co., App. D.C., 53 A.2d 45 (1947).

**Landlord's right of self-help abrogated.** — A landlord's common-law right to self-help eviction was abrogated by statute. Camacho v. 1440 Rhode Island Ave. Corp., App. D.C., 620 A.2d 242 (1993).

**Landlord's right of self-help abrogated with regard to commercial leases.** — The landlord's common law right of self-help is abrogated and the legislatively-created reme-

dies for reacquiring possession are exclusive with regard to commercial tenancies as well as residential tenancies. Simpson v. Lee, App. D.C., 499 A.2d 889 (1985).

**Right-to-enter provision in lease does not relieve lessor of obligation to comply with statutory remedies** in § 16-1501 and this section upon default of payment of rent because of a former tenant's claim to the leased premises. Simpson v. Lee, App. D.C., 499 A.2d 889 (1985).

**Retaliatory eviction is a valid defense to a landlord's action for possession,** but there is in this jurisdiction no independent cause of action by a tenant against a landlord based on an unsuccessful retaliatory eviction suit. Weisman v. Middleton, App. D.C., 390 A.2d 996 (1978).

**Defenses not available.** — While a tenant can defend against a possessory action which is based upon nonpayment of rent by proof that the landlord violated housing regulations, normally, the tenant cannot do so in a suit based upon a notice to quit. Brown v. Young, App. D.C., 364 A.2d 1171 (1976).

The original landlord's breach of lease is not available as a defense to be asserted by the tenants in the second landlord's summary action for possession based on a valid notice to quit. Brown v. Young, App. D.C., 364 A.2d 1171 (1976).

**Tenant held estopped to certain defenses.** — Where the defendant in an ejectment action claimed the right of possession under a lease from the plaintiff, he was thereby estopped to deny the plaintiff's title. Shapiro v. Christopher, 195 F.2d 785 (D.C. Cir. 1952).

For estoppel to apply against a party to litigation, that party must have asserted successfully 1 position in litigation and then switched his position after the other party has relied thereon to his detriment. Atkins v. United States, App. D.C., 283 A.2d 204 (1971).

Once the tenants successfully moved in open court to have the landlord's suits for possession dismissed as moot, the tenants were thereafter equitably estopped from asserting a claim to entitlement to possession. Atkins v. United States, App. D.C., 283 A.2d 204 (1971).

**Landlord's protective order pending tenant's appeal.** — Where a jury grants possession in landlord's action based on notice to quit, the Court of Appeals would stay the eviction pending its decision on appeal, but the stay would be conditioned on the tenant's making monthly payments to the registry of the court in an amount to be determined by the court. Cooks v. Fowler, 437 F.2d 669 (D.C. Cir. 1970), supplemental opinion, 455 F.2d 1281 (D.C. Cir. 1971).

A landlord's protective order pending a tenant's appeal from a judgment of dispossession should be made only on the motion of the

landlord, and only after notice and opportunity for a hearing on such a motion, including opportunity for oral argument and presentation of evidence by both parties. Cooks v. Fowler, 459 F.2d 1269 (D.C. Cir. 1971).

The burden of demonstrating the need for a protective order is on the landlord. Blanks v. Fowler, 459 F.2d 1282 (D.C. Cir. 1971).

Tenant who asserted defenses to landlord's possessory action and demanded a jury trial was properly ordered to make monthly payments equal to the accruing rental into the registry of court pending resolution of case. McNeal v. Habib, App. D.C., 346 A.2d 508 (1975).

If tenant in a possessory action demands a trial, future payments for the use of the premises become involved, and at the hearing on the landlord's motion for a protective order, allegations of housing code violations are relevant to the trial court's determination of the amount which should be paid monthly into the registry of court pursuant to the protective order, notwithstanding the fact that the defense of housing code violations is normally irrelevant to a possessory action based upon a valid 30-day notice to quit. McNeal v. Habib, App. D.C., 346 A.2d 508 (1975).

**Tenant's action for malicious prosecution.** — Where a landlord's two unsuccessful suits for possession were brought with malice and without probable cause, the tenant would have action for malicious prosecution on the ground of special injury. Weisman v. Middleton, App. D.C., 390 A.2d 996 (1978).

**Section creates no exception to right of removal based on diversity.** — This section does not create an exception to a defendant's right to remove a case from the Superior Court to a federal court where diversity of citizenship and the requisite jurisdictional amount are

present. Eckert v. Fitzgerald, 550 F. Supp. 88 (D.C. 1982).

**Cited** in Thornhill v. Atlantic Life Ins. Co., 70 F.2d 846 (D.C. Cir. 1934); Shay v. Randall H. Hagner & Co., App. D.C., 34 A.2d 358 (1943); Warthen v. Lamas, App. D.C., 43 A.2d 759 (1945); Koehne v. Harvey, App. D.C., 45 A.2d 780 (1946); Stewart v. Shannon & Luchs Co., App. D.C., 46 A.2d 863 (1946); Fowel v. Continental Life Ins. Co., App. D.C., 55 A.2d 205 (1947); Gunn v. Brown, App. D.C., 59 A.2d 518 (1948); Newlin v. Weaver Bros., App. D.C., 69 A.2d 500 (1949); Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), cert. denied, 393 U.S. 1016, 89 S. Ct. 618, 21 L. Ed. 2d 560 (1969); Dorfmann v. Boozer, 414 F.2d 1168 (D.C. Cir. 1969); Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925, 91 S. Ct. 186, 27 L. Ed. 2d 185 (1970); Williams v. William J. Davis, Inc., App. D.C., 275 A.2d 231 (1971); Dietz v. Miles Holding Corp., App. D.C., 277 A.2d 108 (1971); Robinson v. Diamond Hous. Corp., 463 F.2d 853 (D.C. Cir. 1972); Miles Realty Co. v. Garrett, App. D.C., 292 A.2d 152 (1972); F.W. Berens Sales Co. v. McKinney, App. D.C., 310 A.2d 601 (1973); Smith v. Town Ctr. Mgt. Corp., App. D.C., 329 A.2d 779 (1974); Spingarn v. Landow & Co., App. D.C., 342 A.2d 41 (1975); Miller v. District of Columbia Comm'n on Human Rights, App. D.C., 352 A.2d 387 (1976); Winchester Mgt. Corp. v. Staten, App. D.C., 361 A.2d 187 (1976); Curry v. Dunbar House, Inc., App. D.C., 362 A.2d 686 (1976); Zanakis v. Brawner Bldg., Inc., App. D.C., 377 A.2d 67 (1977); Kaiser v. Rapley, App. D.C., 380 A.2d 995 (1977); United States v. District of Columbia, 669 F.2d 738 (D.C. Cir. 1981); Nicholas v. Howard, App. D.C., 459 A.2d 1039 (1983); Drayton v. Poretsky Mgt., Inc., App. D.C., 462 A.2d 1115 (1983); In re Lieberman, App. D.C., 592 A.2d 1060 (1991).

## § 45-1411. Same — Claims for arrears of rent, double rent, and waste; jurisdiction of court; money judgment.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste; provided, that in such action before the Superior Court of the District of Columbia the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1;

July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 45-911.)

**Cross references.** — As to possessory actions, see § 16-1501 et seq.

**Construction.** — The words “at the same time” in this section do not allow a plaintiff to return to court 4 months after receiving a judgment for possession to obtain a money judgment. *The Most Worshipful Prince Hall Grand Lodge, Inc. v. Moncure*, 122 WLR 61 (Super. Ct. 1993).

**Landlord-tenant relationship is jurisdictional** under this section. *Pollock v. Brown*, App. D.C., 395 A.2d 50 (1978).

**Rent as it falls due becomes a debt which tenant is bound to pay** unless the parties entered into a contrary agreement supported by consideration. *Crowder v. Lackey*, App. D.C., 46 A.2d 699 (1946).

**Money judgment is incidental to possessory action.** — Under this section, the recovery of a money judgment is incidental to the basic action for possession, and the 2 claims are separate and distinct; but the landlord is not required to join his claims, and may sue for rent in a separate action. *Paregol v. Smith*, App. D.C., 103 A.2d 576 (1954).

**Award of rent arrearages limited to tenancy by written agreement or lease.** — This statute authorizing an award of rent arrearages refers specifically to the “leased” premises; and the standard form complaint for possession (Landlord and Tenant Form 1), which appellants used to commence this action, only permits a claim for possession based on rent due “[i]f the tenancy is by written agreement or lease . . . .” *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**Action in ejectment alternative to summary proceeding in Landlord and Tenant Branch of Superior Court.** — The traditional civil action in ejectment, brought in the regular Civil Division of Superior Court pursuant to § 16-1101 et seq., is an alternative to summary proceedings in the Landlord and Tenant Branch. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**Summary proceedings not proper vehicle for damages not deemed rent.** — Although occupants may be liable for damages, in a separate action, for the use and enjoyment of owners’ townhouse, those damages are not

“rent,” and the summary proceedings in the Landlord and Tenant Branch is not the proper vehicle for their recovery of such damages. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**No contractual obligations imposed by tenancy at will.** — A tenancy at will does not operate to impose contractual obligations upon the parties. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**Landlord’s choice of remedies where tenancy at will exists.** — If landlords elect to bring suit under § 16-1101 et seq., they clearly would be authorized, by express statutory provision, to add a damages claim for the use and occupation value of the property, where they would not be entitled to a judgment of rent in arrears under this section. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**Recoupment of loss of rent.** — Where landlord accepted tenant’s surrender of leased property, released premises to a new tenant, and received a monthly rental sufficiently greater than that of original lease that it allowed landlord to recoup any loss of rent from period property unoccupied, landlord suffered no damages and was not entitled to recover any money from original tenant. *Truitt v. Evangel Temple, Inc.*, App. D.C., 486 A.2d 1169 (1984).

**Claim for rent may be joined only when the possessory action is commenced,** and if omitted may not thereafter be added in that suit. *Paregol v. Smith*, App. D.C., 103 A.2d 576 (1954).

**Judgment for past-due rent properly denied.** — The denial of a judgment for past-due rent under this section was proper where there was not a contractual landlord-tenant relationship between owner and occupants (tenants of former owner) which obligated occupants to pay rent or entitled owners to claim that rent was owed to them. *Nicholas v. Howard*, App. D.C., 459 A.2d 1039 (1983).

**Cited in** *Merritt v. Kay*, 295 F. 973 (D.C. Cir. 1924); *Shipley v. Major*, App. D.C., 44 A.2d 540 (1945); *Soresi v. Repetti*, App. D.C., 76 A.2d 585 (1950); *Dorfmann v. Boozer*, 414 F.2d 1168 (D.C. Cir. 1969); *Millman Broder & Curtis v. Antonelli*, App. D.C., 489 A.2d 481 (1985); *In re Lieberman*, App. D.C., 592 A.2d 1060 (1991).

## § 45-1412. Consolidation of actions for arrears of rent and possession.

If actions be brought separately for arrears of rent and for the possession, they may be afterwards consolidated and 1 judgment rendered in them for the possession and also for the rent. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227;

Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(g); 1973 Ed., § 45-912.)

**Cross references.** — As to possessory actions, see § 16-1501 et seq.

### § 45-1413. Landlord's lien for rent — Time of existence.

The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for 3 months after the rent is due and until the termination of any action for such rent brought within said 3 months. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1229; 1973 Ed., § 45-915.)

**Priority of landlord's lien.** — The landlord's lien for rent is superior to a chattel mortgage given by the tenant after the commencement of the tenancy. *Spilman v. Geiger*, 58 F.2d 890 (D.C. Cir. 1932).

When the landlord is attempting to enforce a lien against the chattels of the lessee, which chattels were purchased on a conditional sales contract, his lien must be consistent with the title and he cannot prevail against the vendor of the chattels even though the conditional sales contract was not recorded. *Stern Co. v. Rosenberg*, 89 F.2d 843 (D.C. Cir. 1937).

Where the landlord brought an action to recover possession of the premises and rent due and recovered a judgment under which levy was made on chattels which had been removed from the leased premises after the commencement of action, but, before the chattels were offered for sale, the tenant filed a voluntary petition in bankruptcy, the landlord's statutory lien and right to priority of payment out of proceeds was not impaired by the Bankruptcy Act, Title 11 of the United States Code. *Moses v. Labofish*, 132 F.2d 16 (D.C. Cir. 1942).

Landlord's lien takes priority over the lien of a subsequently executed chattel deed of trust. *Klein v. Insurance Bldg., Inc.*, App. D.C., 46 A.2d 368 (1946).

Landlord's lien under this section could not be granted priority over the tax claims of the United States for payment out of assets which were in the hands of an assignee for the benefit of creditors, where the landlord failed to perfect its lien by acquiring title or taking possession prior to the assignment. *United States v. Saidman*, 231 F.2d 503 (D.C. Cir. 1956).

Invocation of the statutory enforcement methods is not necessary to the perfection of the landlord's lien (at least insofar as liens other than for federal taxes are concerned), and the priority enjoyed by such lien over the lien of a chattel deed of trust executed after the ten-

ancy commenced and after the chattels had been brought on the premises is not lost when a foreclosure sale is had under a trust deed. *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

Where the landlords of the taxpayer had a statutory lien on the date when the government assessed the taxpayer for unpaid federal taxes, but no steps were taken to assert or enforce the landlords' lien before the federal tax lien was filed, the landlords' lien was an inchoate unperfected lien which did not have precedence over the lien of the government. *United States v. Leventhal*, 316 F.2d 341 (D.C. Cir. 1963).

**Time of attachment of lien.** — The landlord's statutory lien attaches at the moment the chattels of tenants come upon the leased premises. *Moses v. Labofish*, 132 F.2d 16 (D.C. Cir. 1942).

Statutory rent lien without possession parallels the common-law lien accompanied by possession and, by virtue of this section, attaches the moment that the chattels are brought on premises and exists independently of the means of enforcement authorized by statute. *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

**Duration of lien.** — The landlord's lien is not a dormant lien, but is in effect from the time personal chattels are brought upon leased premises, and can only be displaced by a sale of the goods in the ordinary course of trade followed by their removal from the premises. *Munday v. Bricklayers Int'l Union*, App. D.C., 47 A.2d 398 (1946).

**Property covered by lien.** — Where the sale of a rug on the office floor to the tenant's secretary was not made in ordinary course of trade, and the rug was not removed from premises, though no rent was due when sale was made, the rug was subject to a landlord's lien for 3 months rent which subsequently accrued. *Munday v. Bricklayers Int'l Union*, App. D.C., 47 A.2d 398 (1946).

**Charges covered by lien.** — The lien for rent may not be extended beyond the terms of this section to include other items such as water charges unless clear an intention of the parties to make this a part of the consideration for leasing the premises is shown. *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

**Lien restricted to 3 months rent.** — Although 4 months rent was due, the operation of the landlord's lien was properly restricted to 3 months' rent under this section. *Klein v. Insurance Bldg., Inc.*, App. D.C., 46 A.2d 368 (1946).

**Independent existence of lien.** — A landlord's statutory lien exists independently of the several means of enforcement which § 45-1414 permits. *Moses v. Labofish*, 132 F.2d 16 (D.C. Cir. 1942); *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

**Cited** in *Brown v. Petersen*, 25 App. D.C. 359 (1905); *Katz v. Myers*, App. D.C., 114 A.2d 75 (1955); *Recachinas v. Kressin*, App. D.C., 146 A.2d 443 (1958); *Dorfmann v. Boozer*, 414 F.2d 1168 (D.C. Cir. 1969); *In re Lieberman*, App. D.C., 592 A.2d 1060 (1991).

## § 45-1414. Same — How enforced.

The said lien may be enforced:

(1) By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels;

(2) By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosesoever hands they may be found;

(3) By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1230; 1973 Ed., § 45-916.)

**Statutory rent lien exists independently of the means of enforcement** authorized by this section. *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

Invocation of enforcement methods is not

necessary to the perfection of landlord's lien. *Elmira Corp. v. Bulman*, App. D.C., 135 A.2d 645 (1957).

**Cited** in *Dorfmann v. Boozer*, 414 F.2d 1168 (D.C. Cir. 1969).

## § 45-1415. Same — When attachment issuable; executing officer's power of entry.

Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1231; 1973 Ed., § 45-917.)

## § 45-1416. Same — Property subject to lien not to be executed on by another without payment of rent due; when rent in arrears exceeds 3 months.

No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by

virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution; provided, the said arrears of rent do not amount to more than 3 months rent, and in case the said arrears shall exceed 3 months rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, 3 months rent, may proceed to execute his judgment as he might have done before the making of this section; and the marshal is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money. (8 Ann, ch. 14, § 1, 1709; Kilty's Rep. 248; Alex. Br. Stat. 681; Comp. Stat. D.C., 325, § 41; 1973 Ed., § 45-918.)

**§ 45-1417. Distress not unlawful and party making it not trespasser ab initio because of irregularity; special damages recoverable; costs; tender of amends defeats recovery.**

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case at the election of the plaintiff or plaintiffs; provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs; provided nevertheless, that no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought. (11 Geo. 2, ch. 19, §§ 19, 20, 1738; Kilty's Rep. 251; Alex. Br. Stat. 741, 742; Comp. Stat. D.C., 334, §§ 66, 67; 1973 Ed., § 45-919.)

**§ 45-1418. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.**

If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to

be recovered by action of debt in any court of record. (11 Geo. 2, ch. 19, § 3, 1738; Kilty's Rep. 251; Alex. Br. Stat. 732; Comp. Stat. D.C., 329, § 53; 1973 Ed., § 45-920.)

### **§ 45-1419. Representatives of life tenant may recover proportion of rent from under-tenant.**

Where any tenants for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life dies on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively. (11 Geo. 2, ch. 19, § 15, 1738; Kilty's Rep. 251; Alex. Br. Stat. 739; Comp. Stat. D.C., 333, § 64; 1973 Ed., § 45-921.)

### **§ 45-1420. Action in debt may be brought for rent in arrears under lease or demise for life.**

It shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done, in case such rent were due, and reserved upon a lease for years. (8 Ann, ch. 14, § 4, 1709; Kilty's Rep. 248; Alex. Br. Stat. 682; Comp. Stat. D.C., 325, § 42; 1973 Ed., § 45-922.)

### **§ 45-1421. Action by landlord for use and occupation of property where no deed; parol agreement as evidence of quantum of damages.**

It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (11 Geo. 2, ch. 19, § 14, 1738; Kilty's Rep. 251; Alex. Br. Stat. 738; Comp. Stat. D.C., 333, § 63; 1973 Ed., § 45-923.)

**§ 45-1422. Leases under control of mentally handicapped — Surrender and renewal; committee or guardian; court order.**

In all cases where any lunatic is or shall be entitled, or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of 1 or more person or persons, or for any term or number of years, absolute or determinable on the death of 1 or more person or persons, or otherwise; it shall and may be lawful to and for such lunatic, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor, signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or surrenders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct. (11 Geo. 3, ch. 20, § 1, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D.C., 336, § 74; 1973 Ed., § 45-924.)

**§ 45-1423. Same — Lease pursuant to provisions of § 45-1422 valid.**

All and every such lease or leases so to be made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the law, to all intents and purposes, as if such lunatic was at the time of making or executing thereof of sane mind, and had executed the same in his or her own proper person. (11 Geo. 3, ch. 20, § 2, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D.C., 336, § 75; 1973 Ed., § 45-925.)

**§ 45-1424. Same — Money received for renewal paid to guardian for benefit of handicapped; characterization of money at death of handicapped.**

All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the said lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the chancellor shall direct: but, upon the death of such lunatic or lunatics, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of such lunatic or lunatics, at his, her or their death, shall, as between the

representatives of the real and personal estates of all such lunatics, be considered as real estate, unless such lunatic or lunatics shall be tenants for life only; and then the same shall be considered as personal estate. (11 Geo. 3, ch. 20, § 3, 1771; Kilty's Rep. 253; Alex. Br. Stat. 792; Comp. Stat. D.C., 336, § 76; 1973 Ed., § 45-926.)

### **§ 45-1425. Lease held by infant or mentally handicapped — Surrender and renewal; guardian or committee; court order.**

In all cases where any person under the age of 18 years, or any lunatic, is or shall become interested in or entitled to any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politic, corporate or collegiate, aggregate or sole, for the life or lives of 1 or more person or persons, or for any term of years, either absolute or determinable upon the death of 1 or more person or persons or otherwise, it shall and may be lawful for such person under the age of 18 years, or for his or her guardian or guardians, or other person or persons on his or her behalf, and for such lunatic, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of 18 years, and such lunatics, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of 18 years, or lunatic, 1 or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct. (29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D.C., 335, § 70; 1973 Ed., § 45-927; July 22, 1976, D.C. Law 1-75, § 4(j), 23 DCR 1182.)

**Legislative history of Law 1-75.** — Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

### **§ 45-1426. Same — Costs of renewal chargeable to estate of infant or handicapped or deemed charge upon leasehold.**

All and every sum and sums of money and other consideration, paid or advanced by any such guardian, trustee, committee or other person, for or on account of the renewal of any such lease or leases, and all reasonable charges

incident thereto, shall be paid out of the estate or effects of the infant or lunatic for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premises, together with interest for the same, as the said court shall direct and determine. (29 Geo. 2, ch. 31, § 2, 1756; Kilty's Rep. 253; Alex. Br. Stat. 789; Comp. Stat. D.C., 335, § 71; 1973 Ed., § 45-928.)

**§ 45-1427. Same — New leases to be of same nature and subject to same liabilities as surrendered leases.**

The respective leases to be so renewed, shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made. (29 Geo. 2, ch. 31, § 3, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D.C., 335, § 72; 1973 Ed., § 45-929.)

**§ 45-1428. Same — Renewed lease valid.**

Every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender had been made by and on the behalf of a person of full age, or sane mind. (29 Geo. 2, ch. 31, § 4, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D.C., 336, § 73; 1973 Ed., § 45-930.)

**§ 45-1429. Surrender for new lease good without surrender of underleases; underleases continue unaffected; all rights and remedies to continue.**

In case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all the underleases, be as good and valid, to all intents and purposes, as if all the underleases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the underlessees shall hold and enjoy the messuages, lands, and tenements, in the respective underleases, comprised, as if the original leases, out of which the respective underleases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have, and be entitled to, such and the same remedy, by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such underlease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such underlease was derived, as they would

have had in case such former lease had been still continued, or as they would have had, in case the respective underleases had been renewed under such new principal lease. (4 Geo. 2, ch. 28, § 6, 1731; Kilty's Rep. 249; Alex. Br. Stat. 708; Comp. Stat. D.C., 328, § 50; 1973 Ed., § 45-931.)

### **§ 45-1430. Grant or assignment of reversion of premises or by lessee not to affect rights or duties under lease.**

The grantee or assignee of the reversion of any leased premises shall have the same right of action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee, or assignee, upon any covenants in the lease which the lessee might have had against the lessor. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1234; 1973 Ed., § 45-932.)

**New owners' right of action.** — New owners of property acquire the same right of action for rent, or for use and occupation, against the lessee, if holding over his term, which the original owner had. Selden v. Lee, 3 F.2d 335 (D.C. Cir. 1925).

**Covenant against subletting runs with the land** and may be enforced by assignee of reversion. Bailey v. Allen E. Walker & Co., 290 F. 282 (D.C. Cir. 1923).

**Assignee placed in same position as assignor.** — This section puts the assignee in exactly the same position as the assignor with respect to the enforcement of the lease. In-

cluded within the right of action is the right to enforce every provision of the lease, including the tenant's express waiver of his right to a notice to quit. Word v. Tiber Island Coop. Homes, Inc., App. D.C., 491 A.2d 521 (1985).

**Covenant in a lease against assigning,** being for the benefit of lessor, may be availed of only by him or his representative or assignee. Mars v. Spanos, 139 F.2d 369 (D.C. Cir. 1943).

**Cited in Banks v. Torre, App. D.C., 56 A.2d 52 (1947); Gulf Motors, Inc. v. Fenner, App. D.C., 114 A.2d 543 (1955); International Comm'n on English in Liturgy v. Schwartz, App. D.C., 573 A.2d 1303 (1990).**

### **§ 45-1431. Grants of remainders, reversions, and rents good without attornment; payment of rent to grantor without notice valid.**

All grants or conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which rent shall be issuing; or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made; provided, nevertheless, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conisor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee. (4 Ann, ch. 16, §§ 9, 10, 1705; Kilty's Rep. 246; Alex. Br. Stat. 660, 661; Comp. Stat. D.C., 496, §§ 31, 32; 1973 Ed., § 45-933.)

**§ 45-1432. Fraudulent attornment void; possession not changed by such attornment; limitation on scope of provisions.**

All and every fraudulent attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be anywise changed, altered, or affected by any such attornment or attornments; provided always, that nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited. (11 Geo. 2, ch. 19, § 11, 1738; Kilty's Rep. 251; Alex. Br. Stat. 737; Comp. Stat. D.C., 332, § 60; 1973 Ed., § 45-934.)

## CHAPTER 15. RENT CONTROL.

### *Subchapter I. Findings; Purposes; Definitions.*

Sec.

45-1501 to 45-1503. [Expired].

### *Subchapter II. Rent Stabilization Program.*

45-1511 to 45-1530. [Expired].

### *Subchapter III. Rental Supplement Program.*

45-1541 to 45-1548. [Expired].

### *Subchapter IV. Revenue.*

45-1551. [Expired].

### *Subchapter V. Evictions; Retaliatory Action.*

45-1561 to 45-1563. [Repealed].

### *Subchapter I. Findings; Purposes; Definitions.*

## **§§ 45-1501 to 45-1503. Findings; purposes; definitions.**

Expired.

**Cross references.** — As to present provisions concerning findings, purposes and definitions in rental housing law, see subchapter I of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — Law 3-131, the “Rental Housing Act of 1980,” was

### *Subchapter VI. Conversion or Demolition of Rental Housing.*

Sec.

45-1571, 45-1572. [Expired].

### *Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance.*

45-1581 to 45-1585. [Expired].

### *Subchapter IX. Miscellaneous Provisions.*

45-1591 to 45-1597. [Expired].

introduced in Council and assigned Bill No. 3-321, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first and second readings on November 12, 1980, November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-340 and transmitted to both Houses of Congress for its review.

### *Subchapter II. Rent Stabilization Program.*

## **§§ 45-1511 to 45-1530. Abolition of Rental Accommodations Commission; Rental Housing Commission established; composition; appointment; qualifications; compensation; removal; powers and duties of Rental Housing Commission; Rent Administrator; application of subchapter; rent ceiling established; adjustments in rent ceiling; increases above base rent; rent ceiling upon termination of exemption and for newly-covered rental units; petitions for capital improvements; change in services and facilities; hardship petition; vacant accommodation; substantial rehabilitation; voluntary agree-**

## ment; adjustment procedure; security deposit; civil action; judicial review.

Expired.

**Cross references.** — As to present provisions of rent stabilization program, see subchapter II of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-

1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — See note to § 45-1501.

### *Subchapter III. Rental Supplement Program.*

## §§ 45-1541 to 45-1548. Definitions; establishment; eligibility; grants; application; continuing eligibility; termination of eligibility; tax exemption.

Expired.

**Cross references.** — As to tenant assistance program, see subchapter III of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-

1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — See note to § 45-1501.

### *Subchapter IV. Revenue.*

## § 45-1551. Rental unit fee.

Expired.

**Cross references.** — As to present provisions concerning rental unit fee, see § 45-2541.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-1597) provided that all subchapters of this

chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — See note to § 45-1501.

### *Subchapter V. Evictions; Retaliatory Action.*

## §§ 45-1561 to 45-1563. Evictions; limitation on evictions; retaliatory action; conciliation service.

Repealed. July 17, 1985, D.C. Law 6-10, § 905, 32 DCR 3089.

**Cross references.** — As to present provisions concerning evictions and retaliatory action, see subchapter V of Chapter 25 of this title.

**Repeal of subchapter.** — Section 905 of D.C. Act 6-10, effective July 17, 1985, provided that the provisions of subchapter V are repealed.

**Legislative history of Law 6-10.** — D.C. Law 6-10, the "Rental Housing Act of 1985,"

was introduced in Council and assigned Bill No. 6-33, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-23 and transmitted to both Houses of Congress for its review.

*Subchapter VI. Conversion or Demolition of Rental Housing.***§§ 45-1571, 45-1572. Conversion; demolition.**

Expired.

**Cross references.** — As to present provisions concerning conversion or demolition of rental housing for hotels, etc., see subchapter VI of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-

1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 1-131.** — See note to § 45-1501.

*Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance.***§§ 45-1581 to 45-1585. Notice of right to assistance; eligibility assistance; payments; relocation advisory services; Tenant Hot Line.**

Expired.

**Cross references.** — As to present provisions concerning relocation assistance for displaced tenants, see subchapter VII of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-

1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — See note to § 45-1501.

*Subchapter IX. Miscellaneous Provisions.***§§ 45-1591 to 45-1597. Penalties; attorney fees; severability; supersedure; service; effective date; termination.**

Expired.

**Cross references.** — As to present miscellaneous provisions of rental housing law, see subchapter IX of Chapter 25 of this title.

**Expiration of subchapter.** — Section 907 of D.C. Law 3-131 (codified as former § 45-

1597) provided that all subchapters of this chapter, except subchapter V, shall terminate on April 30, 1985.

**Legislative history of Law 3-131.** — See note to § 45-1501.

## CHAPTER 16. RENTAL HOUSING CONVERSION AND SALE.

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*Subchapter I. Findings; Purposes; Definitions.***§ 45-1601. Findings.**

(a) The Council of the District of Columbia finds that:

(1) There is a continuing housing crisis in the District of Columbia.

(2) There is a severe shortage of rental housing available to the citizens of the District of Columbia. The percentage of all rental housing units within the District of Columbia which are vacant, habitable, and available for occupancy is less than 5% which is generally considered an indication of a serious shortage of rental housing units. The vacancy rate is substantially lower among units which can be afforded by lower income tenants as evidenced by serious overcrowding in private units and waiting lists for public housing in excess of 5,000 households.

(3) Conversion of rental units to condominiums or cooperatives depletes the rental housing stock. Since 1977, more than 8,000 rental units in the District of Columbia have been converted to condominiums or cooperatives, more than 9,000 additional units have not yet been converted but have been declared eligible to do so and applications for 6,000 more units are pending.

The 8,000 units which have been converted represent 4.5% of the District of Columbia's 1977 rental stock, and the 15,000 units subject to conversion represent an additional 8.3%. These trends have been thoroughly investigated and documented by two legislative study commissions: The D.C. Legislative Commission on Housing and the Emergency Commission on Condominium and Cooperative Conversion. The latter Commission reported policy proposals, many of which are contained in this chapter.

(4) Lower income tenants, particularly elderly tenants, are the most adversely affected by conversions since the after conversion costs are usually beyond their ability to pay, which results in forced displacement, serious overcrowding, disproportionately high housing costs, and the loss of additional affordable rental housing stock. The threat of conversion has caused widespread fear and uncertainty among many tenants, particularly lower income and elderly tenants.

(5) The District of Columbia housing assistance plan shows that 43,521 renter households and 14,215 homeowner households are in need of housing assistance in the District.

(6) Very few rental units are being constructed or vacant units being made available for rental occupancy. More units are being converted to other uses or demolished than are being made available for rent.

(7) Experience with conversions since passage of the Condominium Act of 1976 and the Condominium and Cooperative Stabilization Act of 1979 (D.C. Law 3-53) has demonstrated that the previous conversion controls have not been sufficiently effective in preserving rental housing, particularly for those who cannot afford homeownership. Based on that experience and the conclusions of the legislative study commissions, tenants who are most directly affected by the conversion should be provided with sufficient accurate information about the relative advantages and disadvantages to conversion of rental housing and should have a voice in the decision whether or not their rental housing should be converted. These controls are necessary to more effectively assure that housing will be preserved at a cost which can be afforded by current tenants who would otherwise be involuntarily displaced and forced into overcrowded or otherwise substandard housing conditions.

(8) These additional conversion controls are required to preserve the public peace, health, safety, and general welfare.

(b) In enacting the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since the passage of this chapter.

(2) The chapter, as amended by the Rental Conversion and Sale Act of 1980 Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Conversion and Sale Act Amendment Act of 1981 (D.C. Law 4-27), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter, with additional amendments to address minor problems which have been identified since its passage, should be extended for 5 more years.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(c) In enacting the Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988, the Council of the District of Columbia finds that:

(1) A housing crisis continues in the District of Columbia that has not substantially improved since passage of this chapter.

(2) The chapter, as amended by the Rental Housing Act of 1985 (D.C. Law 6-10), the Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983 (D.C. Law 5-38), the Rental Conversion and Sale Act Amendment Act of 1982 (D.C. Law 4-196), the Rental Housing Act of 1980 (D.C. Law 3-131), and the Rental Housing Act of 1977 Extension Act of 1980 (D.C. Law 3-106), has generally been successful in meeting its stated purposes.

(3) The chapter should be extended until September 6, 1995, and thereafter by subsection (d)(4) of this section.

(4) This extension is required to preserve the public peace, health, safety, and general welfare.

(d) In enacting the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995, the Council of the District of Columbia finds that:

(1) The District of Columbia continues to face an ongoing housing crisis and will continue to face such a crisis for the foreseeable future. The well publicized and well documented District budget crisis has meant that the limited ability of the District government to meaningfully address the housing crisis has been further eroded.

(2) The Rental Housing Conversion and Sale Act of 1980, as amended ("this chapter"), has generally been successful in meeting its stated purposes and needs to be continued in effect in light of the ongoing housing and budget crises.

(3) A number of assumptions upon which this chapter was based have changed in light of the almost 15 years of experience since this chapter first went into effect. In continuing this chapter, the Council intends the amendments reflected in this extension to address these changes.

(4) This chapter should be continued into the future so long as the underlying housing crisis continues as declared annually by the Mayor pursuant to § 45-1662.

(5) This extension is required to preserve the public peace, health, safety, and general welfare. (Sept. 10, 1980, D.C. Law 3-86, § 101, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(a), 30 DCR 4866; Sept. 21, 1988, D.C. Law 7-140, § 2(a), 35 DCR 5396; Sept. 29, 1988, D.C. Law 7-154, § 2(a), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(a), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(a), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 7-154 added (13) (now (c)).

D.C. Law 11-31 substituted “September 6, 1995, and thereafter by subsection (d)(4) of this section” for “June 1, 1993” in (c)(3); and added (d).

**Temporary amendments of section.** — Section 2(a) of D.C. Law 7-140 added (13) (now (c)).

Section 3(b) of D.C. Law 7-140 provided that the act shall expire on the 225th day of its having taken effect.

Section 2(a) of D.C. Law 10-13 amended (c)(3) to read as follows:

“(c) In enacting the Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988, the Council of the District of Columbia finds that:

\*\*\*\*\*

(3) The chapter should be extended until the expiration of the Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993.”

Section 3(b) of D.C. Law 10-13 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 10-176, in (c)(3), substituted “July 23, 1994, and thereafter by subsection (d)(4) of this section” for “June 1, 1993”; and added (d).

Section 4(b) of D.C. Law 10-176 provided that the act expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendments of section, see § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1993 (D.C. Act 10-29, May 19, 1993, 40 DCR 3418) and § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Congressional Recess Emergency Amendment Act of 1993 (D.C. Act 10-82, August 4, 1993, 40 DCR 6056).

For temporary amendment of section, see § 2(a) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(a) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837-8).

**Legislative history of Law 3-86.** — Law 3-86, the “Rental Housing Conversion and Sale Act of 1980,” was introduced in Council and assigned Bill No. 3-222, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-140.** — Law 7-140, the “Rental Housing Conversion and Sale Act of 1980 Temporary Extension Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-508. The Bill was adopted on first and second readings on June 14, 1988 and June 28, 1988, respectively. Signed by the Mayor on June 30, 1988, it was assigned Act No. 7-192 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-154.** — Law 7-154, the “Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-462, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-209 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-13.** — D.C. Law 10-13, the “Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-260. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 18, 1993, it was assigned Act No. 10-41 and transmitted to both Houses of Congress for its review. D.C. Law 10-13 became effective on September 11, 1993.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**References in text.** — The “Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983,” referred to in the introductory language of (b), is D.C. Law 5-38.

The “Rental Housing Conversion and Sale Act of 1980 Extension Amendment Act of 1988,” referred to in the introductory language of (c), is D.C. Law 7-154.

**Temporary extension of chapter.** — D.C. Law 10-13, the “Rental Housing Conversion and Sale Act of 1980 Extension Temporary

Amendments Act of 1993," extended this chapter until the expiration of the act. D.C. Law 10-13 became effective September 11, 1993 and pursuant to § 3(b) thereof, D.C. Law 10-13 would expire on the 225th day of its having taken effect.

**Reenactment of Law 3-86.** — Section 2 of D.C. Law 10-176 temporarily reestablished the Rental Housing Conversion and Sale Act of 1980 as it existed on April 23, 1994.

For provisions reestablishing D.C. Law 3-86 as it existed on April 23, 1994, see § 2 of D.C. Law 11-31.

Section 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904) provides for the temporary reenactment into law of D.C. Law 3-86 as it existed on April 23, 1994.

Section 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 2 of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837) provide for the temporary reestablishment as law of D.C. Law 3-86 as it existed on April 23, 1994.

**Amendment of section by Law 10-144.** — Section 2(a) of D.C. Law 10-144 purported to amend this section by adding (d) to read as follows:

"(d) In enacting the Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994, the Council of the District of Columbia finds that:

(1) The District of Columbia continues to face an ongoing housing crisis and will continue to face such a crisis for the foreseeable future. The well publicized and well documented District budget crisis has meant that the limited ability of the District government to meaningfully address the housing crisis has been further eroded.

(2) The Rental Housing Conversion and Sale Act of 1980, as amended ("chapter"), has generally been successful in meeting its stated purposes and needs to be continued in effect in light of the ongoing housing and budget crises.

(3) A number of assumptions upon which this chapter was based have changed in light of the almost 14 years of experience since this chapter first went into effect. In continuing this chapter, the Council intends the amendments reflected in this extension to address these changes.

(4) The chapter should be continued into the future so long as the underlying housing

crisis continues as declared annually by the Mayor pursuant to § 45-1662.

(5) This extension is required to preserve the public peace, health, safety, and general welfare."

The provisions of D.C. Law 10-144 cannot be given effect, however, as that act amends provisions of D.C. Law 3-86 which had expired pursuant to § 45-1601(c)(3) and D.C. Law 10-13, the Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993.

**D.C. Law Review.** — For article, "The rental housing conversion and sale act: A practitioner's roadmap to tenant ownership," see 2 D.C. L. Rev. 91 (1993).

**Constitutionality.** — Tenant-consent conversion procedure does not violate due process rights and does not impermissibly delegate governmental authority to private citizens. Silverman v. Barry, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988).

District's handling of application for condominium conversion did not rise to the level of a constitutional violation or violate the Home Rule Act. Silverman v. Barry, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988).

**Applicability.** — The Rental Housing Act applies to all sales of real property and not just to sales for the purposes of demolition or discontinuance of housing use. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

**A scheme of racketeering activity in violation of the Racketeer Influenced Corrupt Organization Act (RICO) was not shown** where allegations involved a single scheme which was directed at a single victim which resulted in a single, distinct injury to the contractual rights of the parties involved. Edmondson & Gallagher v. Alban Towers Tenants Ass'n, 829 F. Supp. 420 (D.D.C. 1993), modified on other grounds, 48 F.3d 1260 (D.C. Cir. 1995).

**Federal preemption.** — District of Columbia housing law is not preempted by the federal right of rejection in 11 U.S.C. § 365. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

**Cited** in Silverman v. Barry, 727 F.2d 1121 (D.C. Cir. 1984); Green v. Condominium Mgt., Inc., 114 WLR 157 (Super. Ct. 1986); Jonathan Woodner Co. v. Laufer, App. D.C., 531 A.2d 280 (1987); K.G.S., Inc. v. District of Columbia ABC Bd., App. D.C., 531 A.2d 1001 (1987); Lealand Tenants Ass'n v. Johnson, 116 WLR 1457 (Super. Ct. 1988); Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989).

## § 45-1602. Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To discourage the displacement of tenants through conversion or sale of rental property, and to strengthen the bargaining position of tenants toward that end without unduly interfering with the rights of property owners to the due process of law;
- (2) To preserve rental housing which can be afforded by lower income tenants in the District;
- (3) To prevent lower income elderly tenants from being involuntarily displaced when their rental housing is converted;
- (4) To provide incentives to owners, who convert their rental housing, to enable low income non-elderly tenants to continue living in their current units at costs they can afford;
- (5) To provide relocation housing assistance for lower income tenants who are displaced by conversions;
- (6) To encourage the formation of tenant organizations;
- (6a) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and
- (7) To authorize necessary actions consistent with the findings and purposes of this chapter. (Sept. 10, 1980, D.C. Law 3-86, § 102, 27 DCR 2975; Sept. 22, 1994, D.C. Law 10-176, § 3(b), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(b), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 inserted (6a).

**Temporary amendment of section.** — D.C. Law 10-176 inserted (6A).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(b) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2 (b) of D.C. Law 10-144 purported to amend this section by inserting (6A) to read as follows:

“In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

\*\*\*\*\*

(6A) To balance and, to the maximum extent possible, meet the sometimes conflicting goals of creating homeownership for lower income tenants, preserving affordable rental housing, and minimizing displacement; and”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Purchase of property.** — Nothing in the act suggests that a landlord must offer to sell the property to the tenants for a lower price than that which was offered by a third-party purchaser. *Redmond v. Birkel*, 797 F. Supp. 36 (D.D.C. 1992).

Where property consists of more than one unit, the tenants must purchase the complex in

its entirety rather than purchase one or two buildings individually. To do otherwise would decrease the value of the property and would allow the tenants to purchase the property without matching the third-party purchase price. *Redmond v. Birkel*, 797 F. Supp. 36 (D.D.C. 1992).

**Cited** in *Dyer v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 452 A.2d

968 (1982); *Silverman v. Barry*, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988); *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988); *Hornstein v. Barry*, App. D.C., 560 A.2d 530 (1989); *Green v. Gibson*, App. D.C., 613 A.2d 361 (1992).

## **§ 45-1603. Definitions.**

As used in this chapter, the term:

- (1) "Condominium" has the same meaning as in § 45-1802(4).
- (2) "Condominium Act" means the Condominium Act of 1976 (D.C. Code § 45-1801 et seq.).
- (3) "Condominium conversion" is the issuance of notice of filing pursuant to § 45-1866(a).
- (4) "Conversion" shall include cooperative conversions and condominium conversions as defined in this chapter.
- (5) "Cooperative" means a cooperative legally incorporated pursuant to the District of Columbia Cooperative Association Act (D.C. Code § 29-1101 et seq.) or a cooperative corporation incorporated in another jurisdiction for the primary purpose of owning and operating real property in which its members reside.
- (6) "Cooperative Act" means the District of Columbia Cooperative Association Act (D.C. Code § 29-1101 et seq.).
- (7) "Cooperative conversion" is the filing of articles of incorporation pursuant to the Cooperative Act, or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order.
- (8) "District" means the District of Columbia government.
- (9) "Head of household" means a tenant who maintains the affected rental unit as the tenant's principal place of residence, is a resident and domiciliary of the District of Columbia, and contributes more than one-half of the cost of maintaining the rental unit. If no member of a household contributes more than one-half of the cost of maintaining the rental unit, the members of the household who maintain the affected rental unit as their principal place of residence are residents and domiciliaries of the District of Columbia, and contribute to the cost of maintaining the rental unit, may designate one of themselves as the head of household. An individual may be considered a head of household for the purposes of this chapter without regard to whether the individual would qualify as a head of household for the purpose of any other law.
- (10) "Household" means all of the persons living in a rental unit.

(11) "Housing accommodation" or "accommodation" means a structure in the District of Columbia containing 1 or more rental units and the appurtenant land. The term does not include a hotel, motel, or other structure used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests are used for transient occupancy if the owner or other person or entity entitled to receive rents is

subject to the sales tax imposed by § 47-2001 (n)(1)(C) and the occupant of the rental unit has been in occupancy for less than 15 days.

(12) "Low-income" means a household with a combined annual income, in a manner to be determined by the Mayor, which may include federal income tax returns where applicable, totaling less than the following percentages of the lower income guidelines established pursuant to § 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f) for a family of 4 for the Washington Standard Metropolitan Statistical Area (SMSA), as the median is determined by the United States Department of Housing and Urban Development and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes by local or regional government agencies:

one-person household .....	50%
two-person household .....	60%
three-person household or a 1 or 2 person household containing a person who is 62 years of age or older or who is handi- capped .....	90%
four-person household .....	100%
five-person household .....	110%
more than 5 person household .....	120%

(13) "Mayor" means the Mayor of the District of Columbia or the designated representative of the Mayor.

(14) "Owner" means an individual, corporation, association, joint venture, business entity and its respective agents, who hold title to the housing accommodation unit or cooperative share.

(15) "Rental Housing Act" means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Code § 45-2501 et seq.), or any successor rent control act.

(16) "Rental unit" or "unit" means only that part of a housing accommodation which is rented or offered for rent for residential occupancy and includes an apartment, efficiency apartment, room, suite of rooms, and single-family home or duplex, and the appurtenant land to such rental unit.

(17) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or benefits of a rental unit within a housing accommodation. The singular term "tenant" includes the plural.

(18) "Tenant organization" means an organization that represents at least a majority of the heads of household in the housing accommodation excluding those households in which no member has resided in the housing accommodation for at least 90 days and those households in which any member has been an employee of the owner during the preceding 120 days. (Sept. 10, 1980, D.C. Law 3-86, § 103, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(a), 28 DCR 326; Sept. 22, 1994, D.C. Law 10-176, § 3(c), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(c), 42 DCR 3239.)

**Section references.** — This section is referred to in § 45-2204.

**Effect of amendments.** — D.C. Law 11-31, in (7), added “or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order”; and rewrote (15).

**Temporary amendment of section.** — D.C. Law 10-176, in (7), added “or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order” at the end; and, rewrote (15).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(c) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-131.** — Law 3-131, the “Rental Housing Act of 1980,” was introduced in Council and assigned Bill No. 3-321, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first, amended first and second readings on November 12, 1980, November 25,

1980, and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-340 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(c) of D.C. Law 10-144 purported to amend (7) and (15) to read as follows:

“As used in this chapter, the term:

(7) ‘Cooperative conversion’ is the filing of articles of incorporation pursuant to the Cooperative Act, or the comparable act of another jurisdiction and compliance with the requirements of this chapter, in either order.

\*\*\*\*\*

(15) ‘Rental Housing Act’ means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Code § 45-2501 et seq.), or any successor rent control act.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Paragraph (9) construed.** — Paragraph (9) provides only that a tenant organization must contain at least half of the heads of households, but does not specify any criteria for membership or any procedures a tenant organization must follow before terminating membership. *Raskauskas v. Temple Realty Co.*, App. D.C., 589 A.2d 17 (1991).

**Cited** in *Ontell v. Capitol Hill E.W. Ltd. Partnership*, App. D.C., 527 A.2d 1292 (1987); *Redmond v. Birkel*, 797 F. Supp. 36 (D.D.C. 1992).

## Subchapter II. Conversion Procedures.

### § 45-1611. Conversions.

(a) **Prerequisite.** — (1) An owner shall not convert a housing accommodation into a condominium or a cooperative until the Mayor certifies compliance with the provisions of this chapter.

(2) Only an owner may request a tenant election to convert, send notice of intent to convert, or convert an accommodation. Certification of a conversion by the Mayor is not transferable to a subsequent owner. An owner who has issued a notice to vacate for the immediate purpose of discontinuing the housing use and occupancy of a rental unit pursuant to § 45-2551(i)(1)(A), or a purchaser from such owner or successor in interest to such owner, may not request a tenant election to convert the housing accommodation in which the rental units are located.

(3) Certification by the Mayor is effective for 180 days; provided, that the Mayor shall extend the certification if a majority of the qualified voters

consent. If the owner receives certification by the Mayor and does not convert within this period, the owner may not request another tenant election or certification by the Mayor for that accommodation for 1 year from the date of expiration of the prior certification.

(4) Once converted or established as a condominium or cooperative in a newly constructed building, the owner need not comply anew with the requirements of this chapter even if the condominium units or cooperative units have been occupied by tenants partially or exclusively, provided that each tenant has been given written notice, prior to occupying the unit, of the fact that the unit being rented is part of a condominium or cooperative or each tenant who was not given notice waives the right in writing before or after occupancy or vacating the unit.

(b) *Exemption.* — With the Mayor's approval, owners who certify their intent to convert a housing accommodation to a nonprofit cooperative, with an appreciation of share value limited to a maximum of the annual rate of inflation, for low and moderate income persons as defined from time to time by the United States Department of Housing and Urban Development for the Washington Standard Metropolitan Statistical Area (SMSA) may be exempt from this subchapter. "Share value", for the purposes of this subsection, means the actual initial membership price plus the actual cost of any improvement to the unit paid by the member after board approval. Upon application, the Mayor may exempt owners described in this subsection prior to their taking title to the accommodations, provided that they have a valid contract to purchase the accommodation. The Mayor may exempt the owner from some or all the provisions of this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 202, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(b), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(b), 30 DCR 4866; Sept. 22, 1994, D.C. Law 10-176, § 3(d), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(d), 42 DCR 3239.)

**Section references.** — This section is referred to in §§ 45-1618, 45-1657 and 45-1662.

**Effect of amendments.** — D.C. Law 11-31 added (a)(4).

**Temporary amendment of section.** — D.C. Law 10-176 added (a)(4).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(d) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Re-

cess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-131.** — See note to § 45-1603.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(d) of D.C. Law 10-144 purported to amend this section by adding (a)(4) to read as follows:

"(a) Prerequisite.

\*\*\*\*\*

(4) Once converted or established as a condominium or cooperative in a newly con-

structed building, the owner need not comply anew with the requirements of this chapter even if the condominium units or cooperative units have been occupied by tenants partially or exclusively, provided that each tenant has been given written notice, prior to occupying the unit, of the fact that the unit being rented is part of a condominium or cooperative or each tenant who was not given notice waives the right in writing before or after occupancy or vacating the unit."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Declaration of continuing housing crisis.** — See Mayor's Order 83-239, October 7, 1983.

**Constitutionality.** — Tenant-consent conversion procedure does not violate due process rights and does not impermissibly delegate governmental authority to private citizens. Silverman v. Barry, 845 F.2d 1072 (D.C. Cir.),

cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988).

The tenant consent requirement does not impermissibly delegate legislative authority to private citizens. Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989).

**Tenant approval of proposed rehabilitation not required.** — Section 45-2524 is not a tenant-consent provision, and the approval of the tenants as such is not required, and it is sufficient for the landlord to show that the proposed rehabilitation is in the tenants' interest in the sense that the renovations are necessary to correct or improve the condition of the property. Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990).

**Cited** in Dyer v. District of Columbia Dep't of Hous. & Community Dev., App. D.C., 452 A.2d 968 (1982).

## § 45-1612. Tenant election.

(a) *Notice by owner.* — An owner who seeks to convert shall provide each tenant and the Mayor a written request for a tenant election by first class mail and post the request for an election in conspicuous places in common areas of the housing accommodation. The written request shall include, at a minimum, a summary of tenant rights and obligations, a list of tenant voter qualifications and disqualifications, and sources of technical assistance as published in the D.C. Register by the Mayor. If Spanish is the primary language of a head of household, the owner shall provide a Spanish translation of the request to the head of household. An owner shall also provide the Mayor with a list of tenants residing in the housing accommodation.

(b) *Notice by tenant organization.* — Within 30 days of receipt of the owner's request for an election, the tenants may establish a single tenant organization, if one does not exist, and if a tenant organization exists or is established, it shall provide each tenant, the owner, and the Mayor with written notice of the election by first class mail and by conspicuous posting in common areas of the housing accommodation. Notice includes, at a minimum, the date, time and place of the election, and a summary of tenant rights, obligations, a list of tenant voter qualifications and disqualifications, and sources of technical assistance as published in the D.C. Register by the Mayor, if published.

(c) *Conduct of election.* — Within 60 days of receipt of an owner's request for an election, a tenant organization, if one exists or is established, shall conduct an election. If notice of an election is not provided as required by this section, upon the request of a tenant or an owner, the Mayor shall provide notice and conduct an election within 60 days of receipt of an owner's original request for an election.

(d) *Qualified voter.* — A head of household residing in each rental unit of the housing accommodation is qualified to vote unless no member of the household has resided in the accommodation for at least 90 days before the election, or unless a member of the household is or has been an employee of the owner within 120 days prior to the date of application for eligibility, or unless he or

she is a head of household whose continued right to remain a tenant is required by this chapter. The Mayor shall determine the eligibility of voters prior to the election and shall devise such forms and procedures as may be necessary to verify eligibility under this subsection.

(e) *Absentee ballot.* — A head of household unable to attend the election may submit to the Mayor or tenant organization, prior to the election, a signed absentee ballot or sworn statement of agreement or disagreement with the conversion.

(f) *Notification of election results.* — The tenant organization shall notify the owner and the Mayor of the results of the election within 3 days. If the Mayor conducts the election, the Mayor shall notify the owner of the results of the election within 3 days.

(g) *Election audit.* — The Mayor may monitor an election and take measures to preserve the integrity of the election process and result.

(h) *Coercion prohibited.* — An owner, tenant organization, or third party purchaser shall not coerce a household in order to influence the head of household's vote. Coercion includes, but is not limited to, the knowing circulation of inaccurate information; frequent visits or calls over the objection of that household; threat of retaliatory action; an act or threat not otherwise permitted by law which seeks to recover possession of a rental unit, increase rent, decrease services, increase the obligation of a tenant or cause undue or unavoidable inconvenience, harass or violate the privacy of the household; refusal to honor a lease provision; refusal to renew a lease or rental agreement; or other form of threat or coercion.

(i) *Compliance approved.* — If over 50% of the qualified voters vote in approval of conversion, or if an election is not held within 60 days of receipt of an owner's request pursuant to subsection (a) of this section or within such reasonable extension of time as the Mayor may consider necessary to hold an election in accordance with the procedural requirements of this chapter, the Mayor shall certify compliance with this section for purposes of conversion.

(j) *Compliance not approved.* — If 50% or less of the qualified voters vote in approval of conversion, or if an election is invalidated by the Mayor because of fraud or coercion in favor of conversion on the part of the owner, the Mayor shall not certify compliance with this section for purposes of conversion, and an owner may not request another tenant election for that accommodation for 1 year from the date of the election.

(k) *New election.* — If an election is invalidated by the Mayor because of fraud or coercion on the part of the tenant organization, the Mayor shall conduct a new election within 30 days of the invalidation. (Sept. 10, 1980, D.C. Law 3-86, § 203, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(c), 28 DCR 326; Aug. 1, 1981, D.C. Law 4-27, § 2(a), 28 DCR 2824.)

**Section references.** — This section is referred to in § 45-1662.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-131.** — See note to § 45-1603.

**Legislative history of Law 4-27.** — Law

4-27, the "Rental Housing Conversion and Sale Act Amendment Act of 1981," was introduced in Council and assigned Bill No. 4-162, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the

Mayor on June 5, 1981, it was assigned Act No. 4-48 and transmitted to both Houses of Congress for its review.

**Effective date.** — Section 3 of D.C. Law 4-27 provided that the provisions of § 2(a) shall take effect retroactively as of August 10, 1980.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Declaration of continuing housing crisis.** — See Mayor's Order 83-239, October 7, 1983.

**Constitutionality.** — Where the City Council has made an appropriate finding that conversion to condominium use is presumptively contrary to the public interest and should be proscribed, it may constitutionally allow the primary beneficiaries of such a proscription to waive its benefits, even though this allows the

units in question to be used in a manner which would otherwise be impermissible. Although such an arrangement countenances some private sovereignty over the fate of others and a concomitant lack of standards, the due process clause is not thereby transgressed. Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989).

**Delegation of authority.** — The tenant consent requirement does not impermissibly delegate legislative authority to private citizens. Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989).

**Cited** in Jonathan Woodner Co. v. Laufer, App. D.C., 531 A.2d 280 (1987); Silverman v. Barry, 845 F.2d 1072 (D.C. Cir.), cert. denied, 488 U.S. 956, 109 S. Ct. 394, 102 L. Ed. 2d 383 (1988).

## § 45-1613. Conversion fee.

(a) *Amount.* — An owner who seeks to convert shall pay the Mayor a conversion fee of 4% of the declared sales price for each condominium unit or proportionate value of the cooperative residence within the housing accommodation. If a condominium unit or proportionate value of the cooperative residence is sold for less than the declared price, that proportionate share of the conversion fee shall be refunded to the owner. If a condominium unit or proportionate value of the cooperative residence is sold for more than the declared sales price, the conversion fee on that increment of value becomes a lien on the property which the Mayor may collect in the manner provided for collection of property taxes.

(b) *Reduction.* — The Mayor may reduce the conversion fee to as low as \$50 per condominium unit or proportionate value of the cooperative residence if the owner declares the intent to sell or provide a lease or option to lease for at least 5 years to tenants who, at the time of request for an election, are low income and whose continued right to remain a tenant is not required by statute ("qualifying tenants"). To qualify for this reduction, a sale or lease cannot require monthly payments greater than existing rents, as may be increased by the annual adjustment of general applicability provided in § 45-2516(b), or a similar annual adjustment in any successor rent control act, or 25% of gross household income, whichever is greater. The number of qualifying tenants is the number of tenants identified by the Mayor as residing in the accommodation as of the date of the owner's request for an election. The amount of the reduction shall be determined by the Mayor based on factors such as the Mayor may determine, which shall include the percentage of tenants in the accommodation who are qualifying tenants and the percentage of qualifying tenants who purchase or continue renting in accordance with the first sentence of this subsection. The Mayor shall also reduce the amount of the conversion fee of each unit or proportionate value for a cooperative residence that is sold or leased to a low-income purchaser or to a new low-income tenant who leases a unit in accordance with the requirements of this subsection, regardless of where that low-income purchaser or tenant previously lived. In doing so, the

Mayor shall consider the lost conversion fee revenue in comparison to the cost of making available the number of low-income units purchased or leased. If the owner does not sell or lease to the percentage of qualifying tenants or outside purchasers or tenants as declared, the unpaid balance of the conversion fee as adjusted by the Mayor in accordance with the actual sales and leases shall be paid by the owner. The Mayor may assert a lien against any unsold units or proportionate value of the cooperative residence by filing a lien against the land. The Mayor shall not attempt to collect any conversion fee which would not have been due if the provisions of this section had been in effect at the time of the conversion.

(b-1) *Payment.* — The conversion fee required by subsection (a) of this section shall be paid no later than at the time of settlement on the individual units or shares.

(c) *Waiver of lien.* — The Mayor shall waive a conversion fee lien on a condominium unit or proportionate value of the cooperative residence purchased by a low-income tenant. (Sept. 10, 1980, D.C. Law 3-86, § 204, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(c), 30 DCR 4866; Sept. 22, 1994, D.C. Law 10-176, § 3(e), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(e), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 rewrote (b); and validated previously made changes in (b-1) and (c).

**Temporary amendment of section.** — D.C. Law 10-176 rewrote (b); and validated previously made changes in (b-1) and (c).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(e) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(e) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(e) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(e) of D.C. Law 10-144 purported to amend (b), (b-1) and (c) of this section to read as follows:

“(b) Reduction. The Mayor may reduce the conversion fee to as low as \$50 per condominium unit or proportionate value of the cooperative residence if the owner declares the intent to sell or provide a lease or option to lease for at least 5 years to tenants who, at the time of request for an election, are low income and whose continued right to remain a tenant is not required by statute (“qualifying tenants”). To qualify for this reduction, a sale or lease cannot require monthly payments greater than existing rents, as may be increased by the annual adjustment of general applicability provided in § 45-2516(b), or a similar annual adjustment in any successor rent control act, or 25% of gross household income, whichever is greater. The number of qualifying tenants is the number of tenants identified by the Mayor as residing in the accommodation as of the date of the owner’s request for an election. The amount of the reduction shall be determined by the Mayor based on factors such as the Mayor may determine, which shall include the percentage of tenants in the accommodation who are qualifying tenants and the percentage of qualifying tenants who purchase or continue renting in accordance with the first sentence of this subsection. The Mayor shall also reduce the amount of the conversion fee of each unit or proportionate value for a cooperative residence

that is sold or leased to a low-income purchaser or to a new low-income tenant who leases a unit in accordance with the requirements of this subsection, regardless of where that low-income purchaser or tenant previously lived. In doing so, the Mayor shall consider the lost conversion fee revenue in comparison to the cost of making available the number of low-income units purchased or leased. If the owner does not sell or lease to the percentage of qualifying tenants or outside purchasers or tenants as declared, the unpaid balance of the conversion fee as adjusted by the Mayor in accordance with the actual sales and leases shall be paid by the owner. The Mayor may assert a lien against any unsold units or pro-

portionate value of the cooperative residence by filing a lien against the land. The Mayor shall not attempt to collect any conversion fee which would not have been due if the provisions of this section had been in effect at the time of the conversion.

(b-1) Payment. The conversion fee required by subsection (a) of this section shall be paid no later than at the time of settlement on the individual units or shares.

(c) Waiver of lien. The Mayor shall waive a conversion fee lien on a condominium unit or proportionate value of the cooperative residence purchased by a low-income tenant."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

## § 45-1614. Certification fee.

An owner who seeks to convert must pay the Mayor a certification fee. The Mayor is authorized to collect and establish the amount of the fee. The certification fee shall be sufficient to cover the cost of administering this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 205, 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1615. Cooperative conversion.

(a) *Notice.* — An owner shall provide each tenant with prior written notice of an intent to convert of at least 120 days by first class mail and by conspicuous posting in common areas of the housing accommodation. An owner shall not provide notice prior to the Mayor's certification of compliance for purposes of cooperative conversion.

(b) *Tenant opportunity to purchase unit.* — An owner shall make to each tenant of the housing accommodation a bona fide offer to sell to each tenant a share or membership interest in the cooperative. An offer includes, at a minimum, the asking price for the share or membership interest and a summary of tenant rights and sources of technical assistance as published in the D.C. Register by the Mayor, if published. An owner shall afford the tenant at least 60 days in which to make a contract to purchase the share or membership interest at a mutually agreeable price and under mutually agreeable terms, which shall be at least as favorable as those offered to the general public. An owner shall not provide notice prior to the Mayor's certification of compliance for purposes of cooperative conversion.

(c) *Notice to vacate.* — An owner shall not serve a notice to vacate until at least 90 days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase. (Sept. 10, 1980, D.C. Law 3-86, § 206, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(d), 30 DCR 4866.)

**Cross references.** — As to conversion condominiums, see § 45-1868.

**Section references.** — This section is referred to in § 45-2551.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Cited** in Ontell v. Capitol Hill E.W. Ltd. Partnership, App. D.C., 527 A.2d 1292 (1987).

## § 45-1616. Elderly tenancy.

(a) *Eviction limited.* — Notwithstanding any other provision of this subchapter, the Condominium Act, or the Rental Housing Act, an owner of a rental unit in a housing accommodation converted under the provisions of this chapter shall not evict or send notice to vacate to an elderly tenant with an annual household income, as determined by the Mayor, of less than \$40,000 per year unless:

(1) The tenant violates an obligation of the tenancy and fails to correct the violation within 30 days after receiving notice of the violation from the owner;

(2) A court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation; or

(3) The tenant fails to pay rent.

(b) *Rent level.* — Any owner of a converted unit shall not charge an elderly tenant rent in excess of the lawful rent at the time of request for a tenant election for purposes of conversion plus annual increases on that basis authorized under the Rental Housing Act.

(c) *Definition.* — For the purposes of this subchapter, the term “elderly tenant” means a head of household who is 62 years of age or older. The number of elderly tenants qualifying under this section is that number on the day an owner requests a tenant election for purposes of conversion. (Sept. 10, 1980, D.C. Law 3-86, § 208, 27 DCR 2975; Mar. 4, 1981, D.C. Law 3-131, § 801(d), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(e), 30 DCR 4866.)

**Section references.** — This section is referred to in §§ 45-1618, 45-1662, and 45-2707.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-131.** — See note to § 45-1603.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**References in text.** — The “Condominium

Act,” referred to in subsection (a) is defined at § 45-1603(2).

The “Rental Housing Act,” also referred to in subsection (a), is defined at § 45-1603(15).

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Declaration of continuing housing crisis.** — See Mayor’s Order 83-239, October 7, 1983.

## § 45-1617. Property tax abatement.

The Mayor shall not require the owner of a converted condominium unit occupied by a low-income tenant to pay real property tax for the unit. The proportionate value for a unit in a converted cooperative housing accommodation occupied by a low-income tenant shall be exempt from real property tax. (Sept. 10, 1980, D.C. Law 3-86, § 209, 27 DCR 2975; Sept. 22, 1994, D.C. Law 10-176, § 3(f), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(f), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 rewrote this section.

**Temporary amendment of section.** — D.C. Law 10-176 rewrote this section.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(f) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(f) of D.C. Law 10-144 purported to amend this section to read as follows:

“The Mayor shall not require the owner of a converted condominium unit occupied by a low-income tenant to pay real property tax for the unit. The proportionate value for a unit in a converted cooperative housing accommodation occupied by a low-income tenant shall be exempt from real property tax.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

## § 45-1618. Exceptions to coverage of subchapter; expiration provisions.

This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. The rights granted under § 45-1616 to eligible elderly tenants may not be abrogated or reduced notwithstanding such a declaration by the Mayor. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status which are fully vacant as of the date of application to the Mayor for a vacancy exemption. Occupancy by 1 or more employees or other occupants for security or similar nontenancy purposes shall not prevent the accommodation from qualifying for a vacancy exemption. The owner shall submit to the Mayor an application for vacancy exemption in order to qualify for this vacancy exemption. The application shall require that the owner certify that the owner is not an owner or purchaser as described in the third sentence of the second paragraph of § 45-1611(a), and that the owner has affirmatively sought information from any applicable former owner in order to make a truthful certification. The Mayor shall accept the owner's certification unless the Mayor has received information which tends to challenge the truthfulness of the certification. (Sept. 10, 1980, D.C. Law 3-86, § 210, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(f), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-140, § 2(b), 35 DCR 5396; Sept. 29, 1988, D.C. Law 7-154, § 2(b), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(g), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(g), 42 DCR 3239.)

**Cross references.** — As to procedure for filing and recordation of articles of incorporation of cooperative associations, see § 29-1106.

As to notice, registration or rejection, and hearing provisions concerning application for

registration of condominium, see § 45-1866.

**Section references.** — This section is referred to in §§ 45-1641 and 45-1657.

**Effect of amendments.** — D.C. Law 11-31 rewrote this section.

**Temporary amendments of section.** — Section 2(b) of D.C. Law 10-13 amended this section to read as follows:

"This subchapter shall be effective until the expiration of the Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993. The rights granted under § 45-1616 to eligible elderly tenants may not be abrogated or reduced notwithstanding the expiration of this subchapter, or the Mayor's declaration pursuant to § 45-1656(c) that a housing crisis no longer exists. This subchapter applies to conversion of housing accommodations into condominium or cooperative status for which no notice of filing is issued pursuant to § 45-1866, or for which no articles of incorporation are filed pursuant to § 29-1106, prior to the effective date of this subchapter. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status which were vacant on January 1, 1993."

Section 3(b) of D.C. Law 10-13 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 10-176 rewrote this section.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendments of section, see § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1993 (D.C. Act 10-29, May 19, 1993, 40 DCR 3418) and § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Congressional Recess Emergency Amendment Act of 1993 (D.C. Act 10-82, August 4, 1993, 40 DCR 6056).

For temporary amendment of section, see § 2(b) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(g) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-140.** — See note to § 45-1601.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Legislative history of Law 10-13.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Temporary extension of subchapter.** — D.C. Law 10-13, the "Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendments Act of 1993," extended this subchapter until the expiration of the act. D.C. Law 10-13 became effective September 11, 1993 and pursuant to § 3(b) thereof, D.C. Law 10-13 would expire on the 225th day of its having taken effect.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(g) of D.C. Law 10-144 purported to amend this section to read as follows:

"This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. The rights granted under § 45-1616 to eligible elderly tenants may not be abrogated or reduced notwithstanding such a declaration by the Mayor. The provisions of this subchapter shall not apply to the conversion of housing accommodations into condominium or cooperative status which are fully vacant as of the date of application to the Mayor for a vacancy exemption. Occupancy by 1 or more employees or other occupants for security or similar nontenancy purposes shall not prevent the accommodation from qualifying for a vacancy exemption. The owner shall submit to the Mayor an application for vacancy exemption in order to qualify for this vacancy exemption. The application shall require that the owner certify that the owner is not an owner or purchaser as described in the third sentence of § 45-1611(a)(2), and that the owner has affirmatively sought information from any applicable former owner in order to make a truthful certification. The Mayor shall accept the owner's certification unless the Mayor has received information which tends to challenge the truthfulness of the certification."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Applicability of exemption for vacant accommodations.** — Exemption for vacant accommodations does not apply to accommodations which were vacant on January 1, 1980 but occupied on September 10, 1980, the effective date of this subchapter. *Dyer v. District of*

Columbia Dep't of Hous. & Community Dev.,  
App. D.C., 452 A.2d 968 (1982).

## § 45-1619. Retroactive conversion.

With respect to conversions of housing accommodations by owners or contract purchasers who received a notice of filing or filed articles of incorporation as a housing cooperative prior to August 10, 1980 (the effective date of the Rental Housing Conversion and Sale Emergency Act of 1980 (D.C. Act 3-248)), or prior to the effective date of this chapter [September 10, 1980], the following provisions shall apply:

(1) *Definitions.* — For the purposes of this section, unless the subject matter requires otherwise, the term:

(A) “Association” means a group enterprise legally incorporated under the District of Columbia Cooperative Association Act, or a cooperative corporation incorporated pursuant to the laws of another jurisdiction.

(B) “Comparable rental units” means rental units of corresponding facilities with the same or similar benefits or services included in the price of the rent.

(C) “Declarant” shall mean a person(s), association(s), or group(s) who:

(i) In the case of a housing cooperative, obtained an exemption pursuant to § 4 of the Cooperative Regulation Act of 1979 and filed articles of incorporation prior to August 10, 1980; or

(ii) In the case of a condominium conversion, received a notice of filing pursuant to § 45-1866.

(D) “Eligible recipient” means the head of household in which the household has a combined annual income totaling less than the following percentages of the median annual family income (for a household of 4 persons) for the District of Columbia, as such median is determined by the United States Bureau of Census and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District of Columbia incomes collected under contract by local or regional government agencies:

one-person household .....	50%
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two-person household .....	60%
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three-person household or a 1- or 2-person household containing any	
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person who is 60 years of age or older or who is handicapped as defined by the Mayor .....	90%
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four-person household .....	100%
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five-person household .....	110%
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more than 5-person household .....	120%
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(E) “Family” means a group of persons related by blood or marriage.

(F) “Head of household” means an individual who maintains the affected rental unit as his or her principal place of abode, is a bona fide resident and domiciliary of the District of Columbia, and contributes more than one-half the cost of maintaining such rental unit. An individual may be considered a head of household without regard as to whether such individual would qualify as a head of household for the purposes of any other law.

(G) "High rent housing accommodation" means any housing accommodation in the District of Columbia for which the total monthly rent exceeds an amount computed for such housing accommodation as follows:

(i) Multiply the number of rental units in the following categories by the corresponding rents established by the United States Department of Housing and Urban Development for the District of Columbia as the current fair market rents for existing housing under § 8 Housing Assistance Payments Program for Elevator or Non-Elevator (as appropriate) Buildings: (1) efficiency rental units; (2) 1 bedroom rental units; (3) 2 bedroom rental units; (4) 3 bedroom rental units; (5) 4 or more bedroom rental units; so that the rates are not lower than \$267 for 1 bedroom, \$314 for 2 bedroom, \$408 for a 3 or more bedroom, and \$221 for efficiency rental units;

(ii) Total the results obtained in sub subparagraph (i) of this subparagraph; and

(iii) Increase the result obtained in sub subparagraph (ii) of this subparagraph by the maximum percentage of any upward rent adjustments found to be warranted by the District of Columbia Rental Accommodations Commission pursuant to § 206 of the Rental Housing Act of 1977.

(H) "Housing accommodation" means any structure or building in the District of Columbia containing 1 or more rental units, and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy, and in which at least 60% of the rooms devoted to living quarters for tenants or guests are used for transient occupancy; any rental unit in an establishment which has as its primary purpose the providing of diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes; or any dormitory of an institute of higher education, or a private boarding school, in which rooms are provided for students.

(I) "Housing expense" means the amount of rent attributable to a rental unit plus the cost of gas, electricity, water, and sewer services if not included in the rent and if paid by the occupant of such rental unit, but shall exclude any security deposit.

(J) "Housing project" means a group of housing accommodations which are managed as a single business entity.

(K) "Suitable size" means for a 1 person family, an efficiency rental unit; for a 2 person family, a 1 bedroom rental unit; for a family of 3 or 4 persons, a 2 bedroom rental unit; for a family of 5 or 6 persons, a 3 bedroom rental unit; and for a family of 7 or more persons, a 4 bedroom rental unit; except, that adjustments shall be made to allow children and unmarried adults of the opposite sex, to have separate sleeping rooms. In determining suitable size for a comparable rental unit, 1 person living in a 1 bedroom rental unit before relocation as a result of cooperative conversion shall be eligible for assistance at the level of a 1 bedroom comparable rental unit.

(L) "Total monthly rent" shall include the rents asked for vacant units.

(2) *Eligibility for housing assistance and relocation compensation.* —

(A) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion cooperative shall

pay housing assistance, in an amount calculated according to paragraph (3) of this section, to any eligible recipient who:

(i) Makes application for such assistance;

(ii) Has been living, for at least 1 year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he or she is being displaced;

(iii) Is displaced from a rental unit because such rental unit is being converted to a cooperative by the declarant; and

(iv) Relocates in the District of Columbia. Such housing assistance shall be paid in 1 lump sum payment, within 30 days after the date the declarant receives notification pursuant to subparagraph (C) of paragraph (5) of this section, to the eligible recipient or the Mayor, as appropriate. Beginning with the 25th month occurring immediately after the month in which such eligible recipient relocated, and for the immediately succeeding 35 months thereafter, housing assistance payments to such recipient shall be made by the Mayor if, as of the first day of the 25th month occurring after his or her relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which the recipient is entitled to receive under this section.

(B) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant shall pay relocation compensation to an eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the occupant received the 120-day notice of declarant's intention to convert as required by § 603 of the Rental Housing Act of 1977. Such relocation compensation shall be calculated according to the provisions of subparagraph (D) of paragraph (4) of this section.

(C) No part of any housing assistance payment or any relocation compensation made under this section shall be considered income to the eligible recipient for the purposes of Chapter 18 of Title 47. Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment.

(3) *Calculation of housing assistance.* — (A) The amount of each housing assistance payment to be made under this section shall be calculated as follows:

(i) If the amount of an eligible recipient's average monthly housing expense, during the 12 consecutive month period ending with the month preceding the month during which he or she relocated as a result of the rental unit being converted to a cooperative, is an amount which is less than 25% of the average net monthly family income computed for such period, then the amount of the monthly housing assistance payment to such eligible recipient shall be in an amount equal to the difference between an amount equal to 25% of such average net monthly family income and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(ii) If the amount of an eligible recipient's average monthly housing expense, during such period, is an amount which is more than 25% of such average net monthly family income, then the amount of the monthly housing assistance payment shall be in an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the eligible recipient for the first full month after such relocation (excluding security deposit, if any).

(iii) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either sub-subparagraph (i) or (ii) of this subparagraph, as appropriate, by 24. To obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by 36.

(B) The Mayor shall determine, from time to time and at least once every 12 months, the range of rents being charged in the District of Columbia by landlords of privately-owned housing accommodations for available 1 bedroom, 2 bedroom, 3 bedroom or more, and efficiency rental units. The Mayor shall publish his or her preliminary range of rents in the District of Columbia Register and, within 30 days after publication shall hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used for the purposes of this section. The figure obtained under either sub-subparagraph (i) or (ii) of subparagraph (A) of this paragraph, as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time the housing assistance payment is made to such eligible recipient, and the amount of the eligible recipient's average monthly housing expense for the 12-month period referred to in sub-subparagraph (i) of subparagraph (A) of this paragraph.

(4) *Calculation of relocation compensation.* — (A) The amount of relocation compensation payable shall be calculated as follows:

(i) Relocation compensation in the amount of \$125 for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit, or, if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purpose of the preceding sentence, a "room" in an apartment unit shall mean any space 60 square feet or larger which has a fixed ceiling and floor and is subdivided with fixed partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(ii) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington metropolitan area. Such adjustments shall be made no more than once in any calendar year and shall be made only after prior notice and hearing.

(B) After notification of the Mayor's determination pursuant to paragraph (5)(B) of this section, the declarant shall pay relocation compensation as follows:

(i) If the declarant has received at least 10 days advance written notice of the date upon which the apartment unit is to be vacated, the payment shall be paid no later than 24 hours prior to the date the apartment unit is to be vacated; or

(ii) If no such notice has been received, then payment shall be made within 30 days after the apartment unit is vacated.

(C) If there is more than 1 person entitled to relocation compensation with respect to an apartment unit, each such person shall be entitled to share equally in the amount of relocation compensation.

(D) In any case in which there is a question as to whether relocation compensation shall be paid for an apartment unit, or to whom, or the proper amount of such compensation, the declarant shall pay to the Mayor the amount indicated in the notice issued pursuant to paragraph (5)(B) of this section for such apartment unit and shall thereby be relieved of any further obligation under this section with respect to such apartment unit. The Mayor shall hold such payment and shall determine, after investigation, whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons, if any, entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(E) Payment or relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to the declarant by the court rendering the judgment for possession.

(5) *Application for housing assistance and relocation compensation.* —

(A) Each declarant, at the same time he or she sends tenants the 120-day notice required under § 603 of the Rental Housing Act of 1977, shall send to each tenant the application forms (with instructions) provided by the Mayor for making application for housing assistance and relocation compensation payable under the provisions of this section. Each applicant for such housing assistance or relocation compensation shall give to the Mayor reasonable information as may be required in order to determine an applicant's eligibility. All information provided to the Mayor under this paragraph shall be confidential and shall not be disclosed to any person except to parties and their attorneys, officials, and employees conducting proceedings under this section.

(B) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for relocation compensation payable under paragraph (2)(B) of this section, then such applicant shall be presumed to be an eligible recipient. Within 15 working days from receipt of the completed application, the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid, and the address at which such payment should be delivered. Each declarant shall

make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he or she is liable to that eligible recipient. The payment of relocation compensation is subject to review pursuant to paragraph (4)(D) of this section.

(C)(i) If the information provided by an applicant on the form filed with the Mayor indicates on its face that such applicant is eligible for housing assistance payable under paragraph (2)(A) of this section, then such applicant shall be presumed to be an eligible recipient. The Mayor shall notify the appropriate declarant of the amount of housing assistance payment due, to whom it shall be paid, and the address at which such payment should be delivered.

(ii) In the event that a declarant believes either that the recipient is not an eligible recipient, or has not met the requirements of paragraph (2)(A) of this section, or that the payment to that recipient should be lower than the amount indicated by the Mayor for housing assistance payments, the declarant may seek review of the eligibility of the recipient, the recipient's eligibility under paragraph (2)(A) of this section, and the amount of such payment by: (1) Making the payment indicated to the Mayor; and (2) filing a notice of appeal and request for a hearing with the Mayor within 10 days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made. Based on the record of the hearing, the Mayor shall determine whether the recipient is actually eligible for the payment as indicated in the Mayor's notice, or whether the amount of the payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, the Mayor shall issue an order to that effect, and shall refund to the declarant such excess monies, as is appropriate.

(D) The Mayor may review bi-annually, or earlier upon request by a declarant, both the continued eligibility of a recipient for housing assistance and the amount of such payments.

(6) *Payments of housing assistance.* — The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if the Mayor elects not to make a lump sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose.

(7) *Tax exemption.* — (A) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay housing assistance, in an amount calculated according to paragraph (3) of this section, to any eligible recipient who:

(i) Makes application for such assistance;

(ii) Has been living, for at least 1 year immediately prior to the first day of the month in which the application for registration relating to such conversion is filed, in the rental unit from which he or she is being displaced;

(iii) Is displaced from a rental unit because such rental unit is being converted to a condominium by the declarant; and

(iv) Relocates in the District of Columbia.

Such housing assistance shall be paid in 1 lump sum payment within 30 days after the date such recipient relocates. Beginning with the 25th month occurring immediately after the month in which such recipient relocated, and for the immediately succeeding 35 months thereafter, housing assistance payments to such recipient shall be made by the Mayor if, as of the first day of the 25th month occurring after his or her relocation, the recipient is eligible for such payment. In lieu of monthly payments, the Mayor may make a lump sum payment to an eligible recipient equal to the amount to which he or she is entitled to receive under this section.

(B) In addition to all other requirements of this section, and to all other applicable provisions of law, each declarant of a conversion condominium shall pay relocation compensation to any eligible recipient in each rental unit in the building converted if such rental unit is occupied primarily for residential purposes on the date the notice required by § 45-1863 is given. Such relocation assistance shall be calculated according to the provisions of paragraph (9) of this section.

(C) No part of any housing assistance payment or any relocation compensation made under this section shall be considered income to the recipient for the purposes of Chapter 18 of Title 47. Any such housing assistance payment or any relocation compensation made to any person or family entitled to receive any other payment from the District of Columbia government related to paying the costs of housing or shelter shall be in addition to and shall not affect the amount of or entitlement to such other payment.

(8) *Computation of housing assistance.* — (A) The amount of each housing assistance payment to be made under this section shall be calculated as follows:

(i) If the amount of an applicant's average monthly housing expense, during the 12 consecutive month period ending with the month preceding the month during which he or she relocated as a result of his or her rental unit being converted to a condominium, is an amount which is less than 25% of the average net monthly family income, computed for such period, then the amount of the monthly housing assistance payment to such applicant shall be in an amount equal to the difference between an amount equal to 25% of such average net monthly family income and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation (excluding security deposit, if any).

(ii) If the amount of a recipient's average monthly housing expense, during such period, is an amount which is more than 25% of such average net monthly family income, then the amount of the monthly housing assistance payment payable to such applicant shall be an amount equal to the difference between such average monthly housing expense during such period and the amount of the monthly housing expense to be paid by the applicant for the first full month after such relocation (excluding security deposit, if any).

(iii) To obtain the total housing assistance payment to be made by a declarant to any eligible recipient, multiply the figure obtained under either sub subparagraph (i) or (ii) of this subparagraph, as appropriate, by 24. To

obtain the total housing assistance payment to be made by the Mayor to any eligible recipient, multiply such appropriate figure by 36.

(B) The Mayor shall determine, from time to time and at least once every 12 months, the range of rents being charged in the District of Columbia by landlords of privately owned housing accommodations for generally available 1 bedroom, 2 bedroom, 3 bedroom or more, and efficiency rental units. The Mayor shall publish his or her preliminary range of rents in the District of Columbia Register and during the next immediately occurring 30 days hold hearings on that preliminary range. Based on the record of those hearings, the Mayor shall certify a final range of rents to be used for the purposes of this section. The figure obtained under either sub-subparagraph (i) or (ii) of subparagraph (A) of this paragraph, as appropriate, shall not exceed the difference between the highest rent in the range of rents of comparable rental units of suitable size, as determined by the Mayor at the time of the housing assistance payment is made to such recipient, and the amount of the recipient's average monthly housing expense for the 12-month period referred to in sub-subparagraph (i) of subparagraph (A) of this paragraph.

(9) *Computation of relocation compensation.* — (A) The amount of relocation compensation payable shall be calculated as follows:

(i) Relocation compensation in the amount of \$125 for each room in the apartment unit shall be payable to the tenants if the tenants are occupying the apartment unit or if the tenants are not occupying the apartment unit, to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of the preceding sentence, a "room" in an apartment unit shall mean any space 60 square feet or larger which has a fixed ceiling and floor and is subdivided with partitions on all sides, but shall not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(ii) The Mayor shall adjust the amounts to be paid as relocation compensation from time to time solely to reflect changes in the cost of moving within the Washington metropolitan area. Such adjustment shall be made no more than once in any calendar year and shall be made only after prior notice and hearing.

(B) Relocation compensation shall be paid no later than 24 hours prior to the date the apartment unit is to be vacated by the tenants or subtenants if the declarant has received at least 10 days advance written notice of the date upon which the apartment unit is to be vacated. If no such notice has been received, then relocation compensation shall be paid within 30 days after the apartment unit is vacated.

(C) If there is more than 1 person entitled to relocation compensation with respect to an apartment unit, each such person entitled to relocation compensation shall be entitled to share equally in the amount of relocation compensation. In any case in which there is a dispute as to whether relocation compensation shall be paid for an apartment unit, or the proper amount of such compensation or the persons entitled to such compensation, the declarant may pay to the Mayor the maximum possible relocation compensation allowable for such apartment unit and shall thereby be relieved of any further

obligation under this subparagraph with respect to such apartment unit. The Mayor shall hold such payment and shall determine whether relocation compensation is payable with respect to the apartment unit, the amount of relocation compensation payable, if any, and the person or persons entitled thereto. The Mayor shall refund any remainder of such payment to the declarant.

(D) Payment of relocation compensation shall not be required with respect to any apartment unit which is the subject of an outstanding judgment for possession obtained by the declarant or declarant's predecessor in interest against the tenants or subtenants for a cause of action, whether such cause of action arises before or after the service of the notice of conversion. If, however, the judgment for possession is based on nonpayment and arises after the notice of conversion has been given, then relocation compensation shall be required in an amount reduced by the amount determined to be due and owing to declarant by the court rendering the judgment for possession.

(10) *Notification of eligibility; review of eligibility determinations.* —

(A) Each declarant of a conversion condominium, in addition to and at the same time that he or she sends tenants in the building to be converted the notices required under § 45-1868(b), shall send to each such tenant the necessary application forms (with instructions), provided by the Mayor, for making application for the housing assistance payments and relocation compensation payable under the provisions of this section. Each applicant for such assistance or compensation shall give to the Mayor such reasonable information as he or she may require in order to determine whether such applicant is eligible for the payments for which he or she applied. All information provided to the Mayor under this section shall be confidential and shall not be disclosed to any person or governmental or private entity in such a manner as to identify the applicant to whom the information relates.

(B) If the information provided by an applicant on the form filed with the Mayor indicates that such applicant is eligible for the relocation compensation payable under paragraph (7)(B) of this section, then such applicant shall be presumed to be an eligible recipient and the Mayor shall notify the appropriate declarant of the amount of payment due, to whom it shall be paid, and the address at which such payment should be delivered. Each declarant shall make each relocation compensation payment in a lump sum payment equal to the total amount of the payment for which he or she is liable to that recipient.

(C) In the event that a declarant believes that either the recipient is not an eligible recipient, or that the payment to that recipient should be lower than the amount indicated by the Mayor, for either housing assistance payments or for relocation compensation, he or she may seek review of both the eligibility and amount of payment by: (i) Making the payment as indicated by the Mayor; and (ii) filing a notice of appeal and request for a hearing with the Mayor within 10 days after making such payment. The Mayor shall conduct such requested hearing as soon as possible after such request is made. Based on the record of the hearing held as requested by a declarant, the Mayor shall determine whether the recipient is actually eligible for the payment received,

or whether the amount of such payment is correct, as appropriate. In the event the Mayor determines that the recipient is not eligible, or that the amount of the payment made should be reduced, he or she shall issue an order to that effect, requiring the recipient to return to the declarant any payment received to which he or she was not entitled.

(D) The eligibility of a recipient for housing assistance payments shall be reviewed by the Mayor bi-annually.

(11) *Deposit in and payment of banks of District of Columbia housing assistance payments.* — The Mayor may enter into contracts with any bank or other financial institution in the District of Columbia providing that such bank or other financial institution shall make the monthly payments of housing assistance for which the District of Columbia is liable (if the Mayor elects not to make a lump sum payment) from sums of money deposited in such bank or financial institution by the Mayor for that purpose. (Aug. 1, 1981, D.C. Law 4-27, § 2(b), 28 DCR 2824.)

**Legislative history of Law 4-27.** — See note to § 45-1612.

**References in text.** — The “Cooperative Regulation Act of 1979,” referred to in paragraph (1)(C)(i), is D.C. Law 3-19.

The “Rental Housing Act of 1977,” referred to in paragraphs (1)(G)(iii) and (5)(A), is D.C. Law 2-54, which had formerly been codified as Chapter 16 of this title, and which was subse-

quently superseded by the Rental Housing Act of 1980, D.C. Law 3-131. See also § 45-1603(15).

The phrase “the effective date of this chapter” which appears in the introductory language of this section, probably refers to the effective date of D.C. Law 3-86, which was September 10, 1980.

### *Subchapter III. Relocation Assistance.*

## **§ 45-1621. Relocation payment.**

(a) *Required.* — If an owner converts a housing accommodation into a condominium or cooperative pursuant to this chapter, the owner shall provide a relocation payment to each tenant who does not purchase a unit or share or enter into a lease or lease option of at least 5 years’ duration.

(b) *Amount.* — An owner shall pay the tenant only if the tenant provides a relocation expense receipt or a written estimate from a moving company or other relocation service provider. Regardless of the amount on the receipt or written estimates, the owner shall pay no less than \$125, but is not required to pay more than \$500 to the tenant.

(c) *Method.* — An owner may pay by check or cash to the tenant or person designated by the tenant, and shall pay within 7 days of receipt of the written estimate or receipt, the amount indicated or an amount required by subsection (b) of this section.

(d) *Entitlement to receive.* — (1) The tenant who bears the cost of relocation is entitled to the payment. If there is more than 1 tenant who bears the cost of relocation from a unit, the owner shall pay the tenants proportionally.

(2) The owner is not required to make a relocation payment to a tenant against whom the owner has obtained a judgment for possession of the unit.

(3) If an owner does not make a relocation payment as required, the tenant has a private right of action to collect the payment and is entitled to

costs and reasonable attorney fees for bringing the action. (Sept. 10, 1980, D.C. Law 3-86, § 302, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(c), 28 DCR 2824.)

**Section references.** — This section is referred to in §§ 45-1626 and 45-2707.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1622. Relocation services.

The Mayor shall provide relocation assistance to low-income tenants who move from a housing accommodation which is converted into a condominium or cooperative. The Mayor shall provide service in the manner required by § 5-834. (Sept. 10, 1980, D.C. Law 3-86, § 303(a), 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1623. Housing assistance payments.

(a) *Required.* — If an owner converts a housing accommodation into a condominium or cooperative pursuant to this chapter, the Mayor shall provide housing assistance payment for 3 years to each low-income tenant who does not purchase a unit or share.

(b) *Eligibility.* — In order to receive housing assistance payments, the tenant must:

- (1) Be low-income;
- (2) Apply for the assistance;

(3) Have been living in a rental unit within the converted housing accommodation for at least 180 days prior to receipt of an owner's request for a tenant election for purposes of conversion; and

(4) Reside within the District of Columbia after conversion of the housing accommodation.

(c) *Amount.* — The amount of a housing assistance payment is calculated as follows:

(1) If a household's average monthly housing expenses during the 12 consecutive months prior to conversion are less than 25% of net monthly household income, the amount of a monthly housing assistance payment is the difference between 25% of net monthly household income and the projected average monthly housing expenses after conversion;

(2) If a household's average monthly housing expenses during the 12 consecutive months prior to conversion are more than 25% of net monthly household income, the amount of a monthly housing assistance payment is the difference between the prior average monthly housing expenses and the projected average monthly housing expenses after conversion;

(3) The Mayor may review the eligibility of a household and the amount of payments and change the household's status accordingly;

(4) For purposes of this subsection, the term "housing expenses" includes rent or monthly payment for a unit plus the cost of all utilities if not included

in the rent or monthly payment. The term "housing expense" shall not include a security deposit. The Mayor is not required to consider housing expenses which exceed the level of fair market rents established by the federal Department of Housing and Urban Development for the District of Columbia.

(d) *Method.* — (1) The Mayor may make housing assistance payments on a monthly basis or an aggregate basis for any portion of the period of eligibility. An aggregate payment is calculated by multiplying the monthly payment amount by the number of months desired.

(2) The Mayor may contract with a financial institution in the District of Columbia for provision of housing assistance payments with District funds.

(3) The Mayor may provide housing assistance payments to the tenant, or to the tenant's landlord directly. (Sept. 10, 1980, D.C. Law 3-86, § 304, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(d), 28 DCR 2824.)

**Section references.** — This section is referred to in § 45-1626.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1624. Payments not subject to District tax.

Relocation and housing assistance payments are not income to the recipient for purposes of the District of Columbia Income and Franchise Tax Act of 1947 (D.C. Code, § 47-1801.1 et seq.). (Sept. 10, 1980, D.C. Law 3-86, § 305, 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1625. Tenant rights.

The Mayor shall include tenant rights to relocation payments, relocation services, and housing assistance payments in the summary of tenant rights required for publication in the D.C. Register. When an owner sends notice of intent to convert a housing accommodation into a condominium or cooperative, the owner shall attach to that notice a summary of tenant rights under this subchapter and an application for relocation services and housing assistance payments as published in the D.C. Register by the Mayor. (Sept. 10, 1980, D.C. Law 3-86, § 306, 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1626. Housing assistance fund.

(a) *Creation.* — The Mayor shall deposit revenues from collection of the condominium or cooperative conversion fee in a special fund for purposes of housing assistance to low-income persons.

(b) *Authorized uses.* — The Mayor may spend revenues from the special fund as follows:

(1) For providing housing assistance payments as required by this chapter; and

(2) For the fiscal year ending on September 30, 1984, the Mayor may spend up to 50% of the revenue deposited in the fund as of September 30, 1983, plus up to 50% of the revenue deposited in the fund each fiscal year thereafter, as follows:

(A) For the District of Columbia Home Purchase Assistance Program, provided that the Mayor shall give priority to those tenants who live in buildings which have received certification for conversion under the provisions of this chapter, or tenants who live in housing accommodations in which the tenant association has signed a contract to purchase the accommodation under the provisions of this chapter; and

(B) For relocation payments and housing assistance payments for tenants displaced under the provisions of Chapter 7 of Title 5:

(i) The amount, method, and entitlement of relocation payments shall be in accordance with § 45-1621(b), (c), and (d); and

(ii) The eligibility, amount, and method of housing assistance payments shall be in accordance with § 45-1623(b), (c), and (d).

(c) *Appropriation.* — The Mayor shall request an appropriation in the annual budget of the District of revenues within the special fund for its authorized purposes.

(d) *Termination.* — The Council of the District of Columbia shall reestablish the special fund by the end of the 16th fiscal year following the effective date of this subchapter. Should the fund not be reestablished, it is dissolved and its revenues shall revert to the General Fund of the District. During the life of the special fund, however, its revenues do not revert to the General Fund at the end of a fiscal year. (Sept. 10, 1980, D.C. Law 3-86, § 307, 27 DCR 2975; Mar. 10, 1983, D.C. Law 4-196, § 2, 30 DCR 57; Nov. 5, 1983, D.C. Law 5-38, § 2(g), 30 DCR 4866; Sept. 21, 1988, D.C. Law 7-140, § 2(c), 35 DCR 5396; Sept. 29, 1988, D.C. Law 7-154, § 2(c), 35 DCR 5715.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-196.** — Law 4-196, the "Rental Housing Conversion and Sale Act of 1980 Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-442, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982,

respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-280 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-140.** — See note to § 45-1601.

**Legislative history of Law 7-154.** — See note to § 45-1601.

## § 45-1627. Information and technical assistance.

The Mayor shall establish an office to coordinate programs of technical assistance and serve as a central clearinghouse for information needed by tenants regarding the conversion and sale of rental housing. Program areas for this office include, but are not limited to, counseling, subsidy programs, relocation services, housing purchase and rehabilitation finance, tax relief programs, and technical assistance for the formation of tenant organizations,

purchase of housing accommodations, rehabilitation, and conversion to cooperative or condominium. (Sept. 10, 1980, D.C. Law 3-86, § 308, 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1628. Expiration provisions.

This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. (Sept. 10, 1980, D.C. Law 3-86, § 309, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(h), 30 DCR 4866; Sept. 21, 1988, D.C. Law 7-140, § 2(d), 35 DCR 5396; Sept. 29, 1988, D.C. Law 7-154, § 2(d), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(h), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(h), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 rewrote this section.

**Temporary amendment of section.** — D.C. Law 10-176 rewrote this section.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2(c) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(h) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(h) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(h) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-140.** — See note to § 45-1601.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Legislative history of Law 10-13.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Temporary extension of subchapter.** — D.C. Law 10-13, the “Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendments Act of 1993,” extended this subchapter until the expiration of the act. D.C. Law 10-13 became effective September 11, 1993 and pursuant to § 3(b) thereof, D.C. Law 10-13 would expire on the 225th day of its having taken effect.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(h) of D.C. Law 10-144 purported to amend this section to read as follows:

“This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

## Subchapter IV. Opportunity to Purchase.

**Expiration of subchapter.** — For provisions regarding the expiration of this subchapter, see § 45-1641.

**§ 45-1631. Tenant opportunity to purchase; “sale” defined.**

(a) Before an owner of a housing accommodation may sell the accommodation, or issue a notice of intent to recover possession, or notice to vacate, for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the accommodation at a price and terms which represent a bona fide offer of sale.

(b) For the purposes of this subchapter, the terms “sell” or “sale” include the execution of any agreement that assigns, leases, or encumbers property, pursuant to which the owner:

(1) Relinquishes possession of the property;

(2) Extends an option to purchase the property for a sum certain at the end of the assignment, lease, or encumbrance and provides that a portion of the payments received pursuant to the agreement is to be applied to the purchase price;

(3) Assigns all rights and interests in all contracts that relate to the property;

(4) Requires that the costs of all taxes and other government charges assessed and levied against the property during the term of the agreement are to be paid by the lessee either directly or through a surcharge paid to the owner;

(5) Extends an option to purchase an ownership interest in the property, which may be exercised at any time after execution of the agreement but shall be exercised before the expiration of the agreement; and

(6) Requires the assignee or lessee to maintain personal injury and property damage liability insurance on the property that names the owner as the additional insured.

(c) For the purposes of this subchapter, the term “sell” or “sale” includes the transfer of 100% of all partnership interests in a partnership which owns the accommodation as its sole asset to 1 transferee or of 100% of all stock of a corporation which owns the accommodation as its sole asset to 1 transferee in 1 or more transactions occurring during a period of 1 year from the date of the first such transfer, and a master lease which meets some, but not all, of the factors described in subsection (b) of this section or which is similar in effect. For the purposes of this subchapter, the term “sell” or “sale” does not include a transfer, even though for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from such transfer will pass from the decedent’s estate to, or solely for the benefit of, charity. For purposes of the preceding sentence, the term “member’s of the decedent’s family” means (i) a surviving spouse of the decedent, lineal descendants of the decedent, or spouses of lineal descendants of the decedent, (ii) a trust for the primary benefit of the persons referred to in clause (i), and (iii) a partnership, corporation, or other entity controlled by the individuals referred to in clauses (i) and (ii). The term “sell” or “sale” does not include a foreclosure sale, a tax sale, or a bankruptcy sale. An owner who is uncertain as to the applicability of this subchapter is deemed to be an aggrieved owner for the purposes of seeking declaratory relief under §§ 45-1653 and 45-1653.1. The tenant or tenant

organization in such an accommodation is deemed to be an aggrieved tenant or tenant organization, as applicable, for these purposes. This subsection shall not apply to any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994. (Sept. 10, 1980, D.C. Law 3-86, § 402, 27 DCR 2975; Oct. 19, 1989, D.C. Law 8-49, § 2, 36 DCR 5790; Feb. 5, 1994, D.C. Law 10-68, § 37, 40 DCR 6311; Sept. 22, 1994, D.C. Law 10-176, § 3(i), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(i), 42 DCR 3239.)

**Section references.** — This section is referred to in § 45-1641.

**Effect of amendments.** — D.C. Law 11-31 added (c).

**Temporary amendment of section.** — D.C. Law 10-176 added (c).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(i) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 8-49.** — Law 8-49, the “Tenant Opportunity to Purchase Clarification Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-188, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-82 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Application of Law 8-49.** — Section 3 of D.C. Law 8-49 provided that the act shall apply to any sale of a rental housing accommodation that occurs after June 23, 1988.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(i) of D.C. Law 10-144 purported to amend this section by adding (c) to read as follows:

“(c) For the purposes of this subchapter, the term “sell” or “sale” includes the transfer of 100% of all partnership interests in a partnership which owns the accommodation as its sole asset to 1 transferee or of 100% of all stock of a corporation which owns the accommodation as its sole asset to 1 transferee in 1 or more transactions occurring during a period of 1 year from the date of the first such transfer, and a master lease which meets some, but not all, of the factors described in subsection (b) of this section or which is similar in effect. For the purposes of this subchapter, the term “sell” or “sale” does not include a transfer, even though for consideration, by a decedent’s estate to members of the decedent’s family if the consideration arising from such transfer will pass from the decedent’s estate to, or solely for the benefit of, charity. For purposes of the preceding sentence, the term “member’s of the decedent’s family” means: (1) a surviving spouse of the decedent, lineal descendants of the decedent, or spouses of lineal descendants of the decedent, (2) a trust for the primary benefit of the persons referred to in clause (1), and (3) a partnership, corporation, or other entity controlled by the individuals referred to in clauses (1) and (2). The term “sell” or “sale” does not include a foreclosure sale, a tax sale, or a bankruptcy sale. An owner who is uncertain as to the applicability of this subchapter is deemed to be an aggrieved owner for the purposes of seeking declaratory relief under §§ 45-

1653 and 45-1653.1. The tenant or tenant organization in such an accommodation is deemed to be an aggrieved tenant or tenant organization, as applicable, for these purposes. This subsection shall not apply to any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Clarification Act violates contracts clause.** — The Clarification Act, which amended subsection (b) of this section in 1989, appears in spirit, in language, and in its explicit retroactive application to be directed only to the benefit of the "special interest" of the

West End tenants, rather than to any broad societal interests. Accordingly, the Clarification Act serves no broad public purpose and, as applied to the subject master lease, is unconstitutional as violative of the Contracts Clause. *West End Tenants Ass'n v. George Washington Univ.*, App. D.C., 640 A.2d 718 (1994).

**Cited** in *Columbia Plaza Tenants Ass'n v. Antonelli*, App. D.C., 462 A.2d 433 (1983); *Dresser v. Sunderland Apts. Tenants Ass'n*, App. D.C., 465 A.2d 835 (1983); *Ontell v. Capitol Hill E.W. Ltd. Partnership*, App. D.C., 527 A.2d 1292 (1987); *Clay v. Hanson*, App. D.C., 536 A.2d 1097 (1988); *Lealand Tenants Ass'n v. Johnson*, App. D.C., 572 A.2d 431 (1990); *Stanton v. Gerstenfeld*, App. D.C., 582 A.2d 242 (1990); *Raskauskas v. Temple Realty Co.*, App. D.C., 589 A.2d 17 (1991).

## § 45-1632. Offer of sale.

The owner shall provide each tenant and the Mayor a written copy of the offer of sale by first class mail and post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation if it consists of more than 1 unit. An offer includes, at a minimum:

(1) The asking price and material terms of the sale;

(2) A statement that the tenant has the right to purchase the accommodation under this chapter and a summary of tenant rights and sources of technical assistance as published in the D.C. Register by the Mayor; provided, however, that if no such statement and summary have been published, the owner will be deemed in compliance with this paragraph;

(3) A statement as to whether a contract with a third party exists for sale of the accommodation and that the owner shall make a copy available to the tenant within 7 days after receiving a request; and

(4) A statement that the owner shall make available to the tenant a floor plan of the building and an itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the 2 preceding calendar years within 7 days after receiving a request. The statement shall also indicate that the owner shall, at the same time, make available the most recent rent roll, list of tenants, and list of vacant apartments. If the owner does not have a floor plan, the owner may meet the requirement to provide a floor plan by stating in writing to the tenant that the owner does not have a floor plan. (Sept. 10, 1980, D.C. Law 3-86, § 403, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(i), 30 DCR 4866; Sept. 22, 1994, D.C. Law 10-176, § 3(j), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(j), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 added the last sentence in (4).

**Temporary amendment of section.** — D.C. Law 10-176 added the last sentence in (4).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its

having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(j) of the Rental Housing Conversion and Sale Act of

1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(j) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(j) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recession Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(j) of D.C. Law 10-144 purported to amend (4) of this section to read as follows:

"The owner shall provide each tenant and the Mayor a written copy of the offer of sale by first class mail and post a copy of the offer of sale in a conspicuous place in common areas of the housing accommodation if it consists of more than 1 unit. An offer includes, at a minimum:

\*\*\*\*\*

"(4) A statement that the owner shall make available to the tenant a floor plan of the building and an itemized list of monthly operating expenses, utility consumption rates, and capital expenditures for each of the 2 preceding calendar years within 7 days after receiving a request. The statement shall also indicate that the owner shall, at the same time, make avail-

able the most recent rent roll, list of tenants, and list of vacant apartments. If the new owner does not have a floor plan, the owner may meet the requirement to provide a floor plan by stating in writing to the tenant that the owner does not have a floor plan."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Operating expense statement.** — Negotiation period was not extended by plaintiff's request for operating expense statement where the request was not made until after the expiration of the negotiating period provided by § 45-1640(2). Lealand Tenants Ass'n v. Johnson, 116 WLR 1457 (Super. Ct. 1988).

**Owner's failure to provide tenants with statement of operating expenses did not toll running of negotiation period.** — Owners did not display bad faith in not complying with tenants' request for a detailed statement of operating expenses. Paragraph (4) of this section requires owners to provide this statement within 7 days upon request, and § 45-1640(2) provides that for every day that owners delay in providing required information, the negotiation period is extended by one day. In the context of the statute, however, it is clear that the purpose of a statement of operating expenses is to help a tenant organization determine the terms of the contract it will propose. Because the request in this case came after the tenant association had already submitted two contracts, the owner's failure to produce the statement did not toll the running of the negotiation period. Lealand Tenants Ass'n v. Johnson, App. D.C., 572 A.2d 431 (1990).

**Cited** in Columbia Plaza Tenants Ass'n v. Antonelli, App. D.C., 462 A.2d 433 (1983); Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988); Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990); Raskauskas v. Temple Realty Co., App. D.C., 589 A.2d 17 (1991).

## § 45-1633. Third party rights.

The right of a third party to purchase an accommodation is conditional upon exercise of tenant rights under this subchapter. The time periods for negotiation of a contract of sale and for settlement under this subchapter are minimum periods, and the owner may afford the tenants a reasonable extension of such period, without liability under a third party contract. Third party purchasers are presumed to act with full knowledge of tenant rights and public policy under this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 404, 27 DCR 2975.)

**Section references.** — This section is referred to in § 45-1641.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Cited** in Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988); Raskauskas v. Temple Realty Co., App. D.C., 589 A.2d 17 (1991).

**§ 45-1634. Contract negotiation.**

(a) *Bargaining in good faith.* — The tenant and owner shall bargain in good faith. The following constitute prima facie evidence of bargaining without good faith:

(1) The failure of an owner to offer the tenant a price or term at least as favorable as that offered to a third party, within the periods specified in §§ 45-1638(4), 45-1639(4), and 45-1640(4), respectively, without a reasonable justification for so doing;

(2) The failure of an owner to make a contract with the tenant which substantially conforms with the price and terms of a third party contract within the time periods specified in §§ 45-1638(4), 45-1639(4), and 45-1640(4), respectively, without a reasonable justification for so doing; or

(3) The intentional failure of a tenant or an owner to comply with the provisions of this subchapter.

(a-1) *Reduced price.* — If the owner sells or contracts to sell the accommodation to a third party for a price more than 10% less than the price offered to the tenant or for other terms which would constitute bargaining without good faith, the owner shall comply anew with all requirements of §§ 45-1638, 45-1639, and 45-1640, as applicable.

(a-2) *Financial assurances.* — The owner may not require the tenant to prove financial ability to perform as a prerequisite to entering into a contract. The owner may not require the tenant to pay the purchase price in installments unless the owner provides deferred purchase money financing on terms reasonably acceptable to the tenant. The owner may require the tenant to prove that the tenant, either alone or in conjunction with a third party, has comparable financial ability to the third-party contractor before the owner will be required to grant deferred purchase money financing to the tenant on the same terms and conditions agreed between the owner and the third-party contractor. If the tenant can prove comparable financial ability alone, the owner may not require the tenant to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the owner granting deferred purchase money financing at settlement.

(a-3) *Transfers of interest in a partnership or corporation and master leases.* — In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale within the meaning of § 45-1631, but which does not involve a transfer of record title to the real property, the owner shall be bargaining in good faith if the owner offers the tenant the opportunity to acquire record title to the real property or offers the tenant the opportunity to match the type of transfer or agreement entered into with the third party. With respect to either type of offer, all provisions of this subchapter apply.

(b) *Deposit.* — The owner shall not require the tenant to pay a deposit of more than 5% of the contract sales price in order to make a contract. The deposit is refundable in the event of a good faith failure of the tenant to perform under the contract. (Sept. 10, 1980, D.C. Law 3-86, § 405, 27 DCR

2975; Sept. 26, 1980, D.C. Law 3-106, § 3(a), 27 DCR 3758; Sept. 29, 1988, D.C. Law 7-154, § 2(e), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(k), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(k), 42 DCR 3239.)

**Section references.** — This section is referred to in § 45-1641.

**Effect of amendments.** — D.C. Law 11-31 inserted (a-1), (a-2) and (a-3).

**Temporary amendment of section.** — D.C. Law 10-176 inserted (a-1), (a-2) and (a-3).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(k) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-106.** — Law 3-106, the “Rental Housing Act of 1977 Extension Act of 1980,” was introduced in Council and assigned Bill No. 3-326, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 15, 1980, and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-231 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(k) of D.C. Law 10-144 purported to insert new (a-1), (a-2) and (a-3) of this section to read as follows:

“(a-1) Reduced price. If the owner sells or contracts to sell the accommodation to a third party for a price more than 10% less than the price offered to the tenant or for other terms

which would constitute bargaining without good faith, the owner shall comply anew with all requirements of §§ 45-1638, 45-1639, or 45-1640, as applicable.

“(a-2) Financial assurances. The owner may not require the tenant to prove financial ability to perform as a prerequisite to entering into a contract. The owner may not require the tenant to pay the purchase price in installments unless the owner provides deferred purchase money financing on terms reasonably acceptable to the tenant. The owner may require the tenant to prove that the tenant, either alone or in conjunction with a third party, has comparable financial ability to the third party contractor before the owner will be required to grant deferred purchase money financing to the tenant on the same terms and conditions agreed between the owner and the third party contractor. If the tenant can prove comparable financial ability alone, the owner may not require the tenant to secure a third party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the owner granting deferred purchase money financing at settlement.

“(a-3) Transfers of interest in a partnership or corporation and master leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale within the meaning of § 45-1631(c), but which does not involve a transfer of record title to the real property, the owner shall be bargaining in good faith if the owner offers the tenant the opportunity to acquire record title to the real property or offers the tenant the opportunity to match the type of transfer or agreement entered into with the third party. With respect to either type of offer, all provisions of this subchapter apply.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Good-faith bargaining found.** — See Lealand Tenants Ass’n v. Johnson, 116 WLR 1457 (Super. Ct. 1988).

**Negotiation period extended by good faith requirement.** — Because the owners failed to respond to the tenant organization’s contract proposal until after the end of the 120-day period, they in effect extended the statutorily required reasonable negotiation period, and once the owners by their actions extended the negotiation period, good faith requirement of this section made it impermissible for them not to give the tenant organization an opportunity to respond to their objections to the

first contract proposal. Lealand Tenants Ass'n v. Johnson, App. D.C., 572 A.2d 431 (1990).

**Cited** in Columbia Plaza Tenants Ass'n v. Antonelli, App. D.C., 462 A.2d 433 (1983); Clay

v. Hanson, App. D.C., 536 A.2d 1097 (1988); Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990).

## § 45-1635. Exercise or assignment of rights.

The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable. (Sept. 10, 1980, D.C. Law 3-86, § 406, 27 DCR 2975; Sept. 22, 1994, D.C. Law 10-176, § 3(l), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(l), 42 DCR 3239.)

**Section references.** — This section is referred to in § 45-1641.

**Effect of amendments.** — D.C. Law 11-31 rewrote this section.

**Temporary amendment of section.** — D.C. Law 10-176 rewrote this section.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(l) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(l) of D.C. Law 10-144 purported to amend this section to read as follows:

"The tenant may exercise rights under this subchapter in conjunction with a third party or by assigning or selling those rights to any party, whether private or governmental. The exercise, assignment, or sale of tenant rights may be for any consideration which the tenant, in the tenant's sole discretion, finds acceptable. Such an exercise, assignment, or sale may occur at any time in the process provided in this subchapter and may be structured in any way the tenant, in the tenant's sole discretion, finds acceptable."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Cited** in Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988); Lealand Tenants Ass'n v. Johnson, App. D.C., 572 A.2d 431 (1990).

## § 45-1636. Waiver of rights.

An owner shall not request, and a tenant may not grant, a waiver of the right to receive an offer of sale under this subchapter. An owner shall not require waiver of any other right under this subchapter except in exchange for consideration which the tenant, in the tenant's sole discretion, finds acceptable. (Sept. 10, 1980, D.C. Law 3-86, § 407, 27 DCR 2975; Sept. 22, 1994, D.C. Law 10-176, § 3(m), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(m), 42 DCR 3239.)

**Section references.** — This section is referred to in § 45-1641.

**Effect of amendments.** — D.C. Law 11-31 added “except in exchange for consideration which the tenant, in the tenant’s sole discretion, finds acceptable” at the end of the second sentence.

**Temporary amendment of section.** — D.C. Law 10-176 added “except in exchange for consideration which the tenant, in the tenant’s sole discretion, finds acceptable” at the end of the second sentence.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(m) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(m) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(m) of the Rental

Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Re却ess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(m) of D.C. Law 10-144 purported to amend this section to read as follows:

“An owner shall not request, and a tenant may not grant, a waiver of the right to receive an offer of sale under this subchapter. An owner shall not require waiver of any other right under this subchapter except in exchange for consideration which the tenant, in the tenant’s sole discretion, finds acceptable.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Cited** in Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988).

## § 45-1637. Right of first refusal.

In addition to any and all other rights specified in this subchapter, a tenant or tenant organization shall also have the right of first refusal during the 15 days after the tenant or tenant organization has received from the owner a valid sales contract to purchase by a third party. If the contract is received during the negotiation period pursuant to § 45-1638(2), § 45-1639(2), or § 45-1640(2), the 15-day period will begin to run at the end of the negotiation period. In exercising rights pursuant to this section, all rights specified in this subchapter shall apply except the minimum negotiation periods specified in §§ 45-1638(2), 45-1639(2), and 45-1640(2). (Sept. 10, 1980, D.C. Law 3-86, § 408, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(j), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(f), 35 DCR 5715.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Section construed.** — A reasonable interpretation of this section is that when a third-party contract is received by the tenant organization after negotiations have begun, it is at least permissible for the owners to ask for subsidiary terms — i.e., nonmaterial terms —

similar to those offered by the third party. If the owners, acting in good faith, and the tenant organization are still unable to reach an agreement at the end of the negotiation period, the third-party contract becomes primary, but the tenant organization has the protection of a 15-day right of first refusal. Lealand Tenants Ass’n v. Johnson, App. D.C., 572 A.2d 431 (1990).

**Cited** in Massengale v. Cafritz, App. D.C., 471 A.2d 998 (1983); Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988); Lealand Tenants Ass’n v. Johnson, 116 WLR 1457 (Super. Ct. 1988).

## § 45-1638. Single-family accommodations.

The following provisions apply to single-family accommodations:

(1) *Written statement of interest.* — Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, the tenant shall have 30 days to provide the owner and the Mayor with a written statement of interest. The statement of interest shall be a clear expression of interest on the part of the tenant to exercise the right to purchase as specified in this subchapter;

(2) *Negotiation period.* — If a tenant has provided a written statement of interest in accordance with paragraph (1) of this section, the owner shall afford the tenant a reasonable period to negotiate a contract of sale, and shall not require less than 60 days, not including the 30 days provided by paragraph (1) of this section. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day;

(3) *Time before settlement.* — The owner shall afford the tenant a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 60 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 90 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(4) *Lapse of time.* — If 180 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the accommodation, the owner shall comply anew with the terms of this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 409, 27 DCR 2975; Sept. 29, 1988, D.C. Law 7-154, § 2(g), 35 DCR 5715.)

**Section references.** — This section is referred to in §§ 45-1634, 45-1637 and 45-1641.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Cited in** Clay v. Hanson, App. D.C., 536 A.2d 1097 (1988); Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990).

## § 45-1639. Accommodations with 2 through 4 units.

The following provisions apply to accommodations with 2 through 4 units:

(1) *Joint and several response.* — The tenants may respond to an owner's offer first jointly, then severally. Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, a group of tenants acting jointly shall have 15 days to provide the owner and the Mayor with a written statement of interest. Following that time period, if the tenants acting jointly have failed to submit a written statement of interest, an individual tenant shall have 7 days to provide a statement of interest to the owner and the Mayor. Each statement of interest must be clear expression of interest on the part of the tenant or tenant group to exercise the right to purchase as specified in this subchapter;

(2) *Negotiation period.* — (A) Upon receipt of a letter of intent from a tenant or a tenant group, the owner shall afford the tenants a reasonable

period to negotiate a contract of sale, and shall not require less than 90 days. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day. If more than 1 individual tenant submits a written statement of interest, the owner shall negotiate with each tenant separately, or jointly if the tenants agree to negotiate jointly;

(B) If, at the end of the 90-day period or any extensions thereof, the tenants jointly have not contracted with the owner, the owner shall provide an additional 30-day period, during which any 1 of the current tenants may contract with the owner for the purchase of the accommodation;

(C) If the owner is required to negotiate with more than one tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants.

(3) *Time before settlement.* — The owner shall afford the tenant a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 90 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be made within 120 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(4) *Lapse of time.* — If 240 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the accommodation, the owner shall comply anew with the terms of this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 410, 27 DCR 2975; Nov. 5, 1983, D.C. Law 5-38, § 2(k), 30 DCR 4866; Sept. 29, 1988, D.C. Law 7-154, § 2(h), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(n), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(n), 42 DCR 3239.)

**Section references.** — This section is referred to in §§ 45-1634, 45-1637, and 45-1641.

**Effect of amendments.** — D.C. Law 11-31, in the third sentence of (1), inserted “if the tenants acting jointly have failed to submit a written statement of interest”; in (2)(A), added the third sentence; and added (2)(C).

**Temporary amendment of section.** — D.C. Law 10-176, in the third sentence of (1), inserted “if the tenants acting jointly have failed to submit a written statement of interest”; in (2)(A), added the third sentence; and added (2)(C).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(n) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(n) of the Rental Housing Conversion and

Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(n) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(n) of D.C. Law 10-144 purported to amend (1) and (2) of this section to read as follows:

"The following provisions apply to accommodations with 2 through 4 units:

"(1) Joint and several response. The tenants may respond to an owner's offer first jointly, then severally. Upon receipt of a written offer of sale from the owner that includes a description of the tenant's rights and obligations under this section, a group of tenants acting jointly shall have 15 days to provide the owner and the Mayor with a written statement of interest. Following that time period, if the tenants acting jointly have failed to submit a written statement of interest, an individual tenant shall have 7 days to provide a statement of interest to the owner and the Mayor. Each statement of interest must be clear expression of interest on the part of the tenant or tenant group to exercise the right to purchase as specified in this subchapter;

"(2) Negotiation period. (A) Upon receipt of a letter of intent from a tenant or a tenant group, the owner shall afford the tenants a reasonable period to negotiate a contract of sale, and shall not require less than 90 days. For every day of

delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day. If more than 1 individual tenant submits a written statement of interest, the owner shall negotiate with each tenant separately, or jointly if the tenants agree to negotiate jointly.

"(B) If, at the end of the 90-day period or any extensions thereof, the tenants jointly have not contracted with the owner, the owner shall provide an additional 30-day period, during which any 1 of the current tenants may contract with the owner for the purchase of the accommodation;

"(C) If the owner is required to negotiate with more than 1 tenant pursuant to this section, the owner may decide which contract is more favorable without liability to the other tenants."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Cited** in Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990).

## § 45-1640. Accommodations with 5 or more units.

The following provisions apply to accommodations with 5 or more units:

(1) *Tenant organization.* — In order to make a contract of sale with an owner, the tenants shall: (A) Form a tenant organization with the legal capacity to hold real property, elect officers, and adopt bylaws, unless such a tenant organization exists in a form desired by the tenants; (B) file articles of incorporation; and (C) deliver an application for registration to the Mayor and the owner by hand or by first class mail within 45 days of receipt of a valid offer. If, at the time of receipt of the valid offer, a tenant organization exists in a form desired by the tenants, the delivery of the application for registration to the Mayor and the owner by hand or by first class mail shall be within 30 days of receipt of a valid offer. The application shall include the name, address, and phone number of tenant officers and legal counsel (if any); a copy of the articles of incorporation, as filed; a copy of the bylaws; documentation that the organization represents at least a majority of the occupied rental units as of the time of registration and such other information as the Mayor may require. Upon registration, the organization constitutes the sole representative of the tenants, and the prior offer of sale is deemed an offer to the organization;

(2) *Negotiation period.* — The owner shall afford the tenant organization a reasonable period to negotiate a contract of sale, and shall not require less than 120 days from the date of receipt of the statement of registration. For every day of delay in providing information by the owner as required by this subchapter, the negotiation period is extended by 1 day;

(3) *Time before settlement.* — (A) The owner shall afford the tenant organization a reasonable period prior to settlement in order to secure financing and financial assistance, and shall not require less than 120 days after the date of contracting. If a lending institution or agency estimates in writing that a decision with respect to financing or financial assistance will be

made within 240 days after the date of contracting, the owner shall afford an extension of time consistent with that written estimate;

(B) If the tenant organization articles of incorporation provide, by the date of contracting, that the purpose of the tenant organization is to convert the accommodation to a nonprofit housing cooperative with appreciation of share value limited to a maximum of the annual rate of inflation, the owner shall require not less than 180 days after the date of contracting or such additional time as required by this section;

(4) *Lapse of time.* — If 360 days elapse from the date of a valid offer under this subchapter and the owner has not sold or contracted for the sale of the accommodation, an owner shall comply anew with the terms of this subchapter. In such a case, the tenant organization shall also comply anew with respect to delivery of a registration statement; the original tenant articles of incorporation, officers and bylaws remain effective unless defective under their own terms or other provisions of law. (Sept. 10, 1980, D.C. Law 3-86, § 411, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(e), 28 DCR 2824.)

**Section references.** — This section is referred to in §§ 45-1634, 45-1637, 45-1641 and 45-1657.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Reenactment of law 3-86.** — See note to § 45-1601.

**Aggrieved party entitled to bring civil action.** — With respect to a housing accommodation of five or more units, it is only to the tenant organization that the owner owes any duties under this chapter; accordingly, if the conduct of an owner gives rise to any basis for a civil action against the owner under § 45-1653, it is only the tenant organization that is "aggrieved" as that term is used in § 45-1653, and, therefore, it is only the tenant organization that can bring a civil action against the owner. *Stanton v. Gerstenfeld*, App. D.C., 582 A.2d 242 (1990).

**Right of individual tenant to negotiate or bring suit.** — Where the accommodation in question has five units or more, an individual tenant may not, in the tenant's own right, negotiate with the owner with respect to the sale of a housing accommodation pursuant to the Act, nor may the tenant sue in the tenant's own right for relief under § 45-1653. *Stanton v. Gerstenfeld*, App. D.C., 582 A.2d 242 (1990).

**Establishment of rules governing membership.** — The District of Columbia Rental Housing Conversion and Sales Act envisioned that a tenant organization could establish reasonable rules governing its membership. *Raskauskas v. Temple Realty Co.*, App. D.C., 589 A.2d 17 (1991).

**Negotiation period.** — The limited negotiation period protects the rights of property

owners from tenants who could easily bind owners for an indefinite period of time. *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988).

Negotiation period was not extended by plaintiff's request for operating expense statement when the request was not made until after the expiration of the negotiating period provided by this section. *Lealand Tenants Ass'n v. Johnson*, 116 WLR 1457 (Super. Ct. 1988).

**Negotiation period extended by owners' failure to respond to contract proposal.** — Because owners failed to respond to the tenant organization's contract proposal until after the end of the 120-day period, they in effect extended the statutorily required reasonable negotiation period. *Lealand Tenants Ass'n v. Johnson*, App. D.C., 572 A.2d 431 (1990).

**Owners' failure to provide tenants with statement of operating expenses did not toll running of negotiation.** — Owners did not display bad faith in not complying with tenants' request for a detailed statement of operating expenses. Section 45-1632(4) requires owners to provide this statement within 7 days upon request, and paragraph (2) of this section provides that for every day that owners delay in providing required information, the negotiation period is extended by one day. In the context of the statute, however, it is clear that the purpose of a statement of operating expenses is to help a tenant organization determine the terms of the contract it will propose. Because the request in this case came after the tenant association had already submitted two contracts, the owners' failure to produce the statement did not toll the running of the negotiation period. *Lealand Tenants Ass'n v. Johnson*, App. D.C., 572 A.2d 431 (1990).

**Cited** in *Columbia Plaza Tenants Ass'n v. Antonelli*, App. D.C., 462 A.2d 433 (1983);

Massengale v. Cafritz, App. D.C., 471 A.2d 998 (1983).

## § 45-1641. Exceptions to coverage of subchapter; expiration provisions.

Sections 45-1631, 45-1633, 45-1634, 45-1635, 45-1636, 45-1638(3) and (4), 45-1639(3) and (4) and 45-1640(3) and (4) apply to any sale of a housing accommodation for which a contract is not fully ratified prior to June 3, 1980, and the period for contracting pursuant to § 601 or § 602 of the Rental Housing Act is not expired prior to the effective date of this subchapter. This subchapter applies in its entirety to any sale of a housing accommodation for which a notice pursuant to § 601 or § 602 of the Rental Housing Act is not received by the tenants in at least 50% of the occupied rental units in the housing accommodation prior to June 3, 1980. This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. This subchapter does not apply to accommodations for which a vacancy exemption is approved, as provided in § 45-1618. (Sept. 10, 1980, D.C. Law 3-86, § 412, 27 DCR 2975; Sept. 26, 1980, D.C. Law 3-106, § 3(b), 27 DCR 3758; Mar. 4, 1981, D.C. Law 3-131, § 801(e), 28 DCR 326; Nov. 5, 1983, D.C. Law 5-38, § 2(l), 30 DCR 4866; Sept. 21, 1988, D.C. Law 7-140, § 2(e), 35 DCR 5396; Sept. 29, 1988, D.C. Law 7-154, § 2(i), 35 DCR 5715; Sept. 22, 1994, D.C. Law 10-176, § 3(o), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(o), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 deleted the former first two sentences and added the last two sentences.

**Temporary amendment of section.** — Section 2(d) of D.C. Law 10-13 amended this section to read as follows:

"This subchapter shall be effective until the expiration of the Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendment Act of 1993. The provisions of this subchapter shall not apply to the sale of housing accommodations which were vacant on January 1, 1980. Sections 45-1631, 45-1633, 45-1634, 45-1635, 45-1636, 45-1638 (3) and (4), 45-1639 (3) and (4) and 45-1640 (3) and (4) apply to any sale of a housing accommodation for which a contract is not fully ratified prior to June 3, 1980, and the period for contracting pursuant to § 601 or 602 of the Rental Housing Act is not expired prior to the effective date of this subchapter. This subchapter applies in its entirety to any sale of a housing accommodation for which a notice pursuant to § 601 or 602 of the Rental Housing Act is not received by the tenants in at least 50% of the occupied rental units in the housing accommodation prior to June 3, 1980."

Section 3(b) of D.C. Law 10-13 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 10-176 deleted the former first two sentences and added the last two sentences.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2(d) of the Rental Housing Conversion and Sale Act of 1980 Extension Emergency Amendment Act of 1994 (D.C. Act 10-235, April 28, 1994, 41 DCR 2599).

For temporary amendment of section, see § 3(o) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(o) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(o) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 3-106.** — See note to § 45-1634.

**Legislative history of Law 3-131.** — See note to § 45-1603.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

**Legislative history of Law 7-140.** — See note to § 45-1601.

**Legislative history of Law 7-154.** — See note to § 45-1601.

**Legislative history of Law 10-13.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**References in text.** — The “Rental Housing Act”, referred to in the second sentence, is the Rental Housing Act of 1977, D.C. Law 2-54, which had formerly been codified as Chapter 16 of this title, and which was subsequently superseded by the Rental Housing Act of 1980, D.C. Law 3-131. See also § 45-1603(15).

**Temporary extension of subchapter.** — D.C. Law 10-13, the “Rental Housing Conversion and Sale Act of 1980 Extension Temporary Amendments Act of 1993,” extended this subchapter until the expiration of the act. D.C. Law 10-13 became effective September 11, 1993, and pursuant to § 3(b) thereof, D.C. Law

10-13 would expire on the 225th day of its having taken effect.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(o) of D.C. Law 10-144 purported to amend this section to read as follows:

“Sections 45-1631, 45-1633, 45-1634, 45-1635, 45-1636, 45-1638 (3) and (4), 45-1639 (3) and (4) and 45-1640 (3) and (4) apply to any sale of a housing accommodation for which a contract is not fully ratified prior to June 3, 1980, and the period for contracting pursuant to § 601 or 602 of the Rental Housing Act is not expired prior to the effective date of this subchapter. This subchapter applies in its entirety to any sale of a housing accommodation for which a notice pursuant to § 601 or 602 of the Rental Housing Act is not received by the tenants in at least 50% of the occupied rental units in the housing accommodation prior to June 3, 1980. This subchapter shall remain in effect until the Mayor declares that a housing crisis no longer exists pursuant to § 45-1662. This subchapter does not apply to accommodations for which a vacancy exemption is approved, as provided in § 45-1639.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

## § 45-1642. Notice to convert; offer to sell.

(a) Every tenant of a housing accommodation which the declarant seeks to convert from a rental basis to a cooperative shall be notified in writing of the declarant’s intent to convert the housing accommodation to a cooperative not less than 120 days before the conversion thereof. The declarant shall also make to each tenant of the housing accommodation a bona fide offer to sell such tenant such shares or membership interest in the cooperative as will enable the tenant to continue to reside in his or her unit after conversion. The offer shall include, but not be limited to, the asking price for the shares or membership interest and a statement of the tenant’s rights to provide such shares or membership interest under the provisions of this section. The tenant shall be afforded not less than 60 days in which to contract with the landlord for the purchase of the shares or membership interest at a mutually agreeable price and under mutually agreeable terms, which shall be at least as favorable as those offered to the general public.

(b) Repealed. (Aug. 1, 1981, D.C. Law 4-27, § 2(f), 28 DCR 2824; Nov. 5, 1983, D.C. Law 5-38, § 3, 30 DCR 4866.)

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Legislative history of Law 5-38.** — See note to § 45-1653.1.

*Subchapter V. Implementation and Enforcement.***§ 45-1651. Rule making; publication requirements.**

(a) The Mayor shall issue rules for the implementation of this chapter. The Mayor shall issue rules for the holding of elections which shall include, but not be limited to, provisions for secret voting, and the right of any person including the owner to observe the counting of the ballots.

(b) By November 9, 1980, the Mayor shall publish in the D.C. Register a summary of tenant rights and obligations pursuant to this chapter, and sources of technical assistance, which shall include, but shall not be limited to, information regarding counseling, subsidy programs, relocation services, housing purchase and rehabilitation finance, tax relief programs, formation of tenant organizations, purchase of housing accommodations, rehabilitation, and conversion to cooperative or condominium.

(c) By March 5, 1996, the Mayor shall issue updated rules for comment, which shall reflect all changes made by the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995. Within 180 days after publication of the proposed rules, the Mayor shall adopt final rules. The failure to meet these deadlines shall not prevent the changes in the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995 from being effective immediately upon September 6, 1995. (Sept. 10, 1980, D.C. Law 3-86, § 501, 27 DCR 2975; Sept. 22, 1994, D.C. Law 10-176, § 3(p), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(p), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 added (c).

**Temporary amendment of section.** — D.C. Law 10-1767 added (c).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(p) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**References in text.** — The Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995, referred to in this section, is D.C. Law 11-31.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(p) of D.C. Law 10-144 purported to amend this section by adding (c) to read as follows:

“(c) Within 180 days after July 23, 1994, the Mayor shall issue updated rules for comment, which shall reflect all changes made by the Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994. Within 180 days after publication of the proposed rules, the Mayor shall adopt final rules. The failure to meet these deadlines shall not prevent the changes in the Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994 from being effective immediately upon July 23, 1994.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Delegation of authority under Rental Housing Conversion and Sale Act of 1983, as amended.** — See Mayor's Order 84-8, January 12, 1984.

## § 45-1652. Time periods.

If a time period running under this chapter ends on a Saturday, Sunday, or legal holiday, it is extended until the next day which is not a Saturday, Sunday, or legal holiday. (Sept. 10, 1980, D.C. Law 3-86, § 502, 27 DCR 2975.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1653. Civil cause of action.

An aggrieved owner, tenant, or tenant organization may seek enforcement of any right or provision under this chapter through a civil action in law or equity, and, upon prevailing, may seek an award of costs and reasonable attorney fees. In an equitable action, the public policy of this chapter favors the waiver of bond requirements to the extent permissible under law or court rule. (Sept. 10, 1980, D.C. Law 3-86, § 503, 27 DCR 2975.)

**Section references.** — This section is referred to in § 45-1656.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Aggrieved party entitled to bring civil action.** — With respect to a housing accommodation of five or more units, it is only to the tenant organization that the owner owes any duties under this chapter; accordingly, if the conduct of an owner gives rise to any basis for a civil action against the owner under this section, it is only the tenant organization that is "aggrieved" as that term is used in this section, and, therefore, it is only the tenant organization that can bring a civil action against the owner. Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990).

**Right of individual tenant to negotiate or bring suit.** — Where the accommodation in question has five units or more, an individual tenant may not, in the tenant's own right, negotiate with the owner with respect to the sale of a housing accommodation pursuant to the Act, nor may the tenant sue in the tenant's own right for relief under this section. Stanton v. Gerstenfeld, App. D.C., 582 A.2d 242 (1990).

**Damages not recoverable.** — Nothing in this section suggests that plaintiffs can collect damages. On the contrary, the language of this section allows plaintiffs to seek only enforcement of the act, costs, and reasonable attorney fees. The act specifically outlines civil and criminal penalties for violations of its provisions, but contains nothing pertaining to damages. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

## § 45-1653.1. Choice of forum.

An aggrieved owner, tenant, or tenant organization may petition the Mayor for declaratory relief under provisions of this chapter. Upon a showing of reasonable grounds, the Mayor shall grant a hearing and may issue findings of fact, conclusions of law, and declaratory orders and take other enforcement actions provided by this subchapter. (Sept. 10, 1980, D.C. Law 3-86, § 503a, as added Nov. 5, 1983, D.C. Law 5-38, § 2(m), 30 DCR 4866.)

**Emergency act amendments.** — For temporary addition of section, see § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 5-38.** — Law

5-38, the "Rental Housing Conversion and Sale Act of 1980 Amendments and Extension Act of 1983," was introduced in Council and assigned Bill No. 5-162 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 15, 1983, it was assigned Act No. 5-63 and

transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-176.** — Law 10-176, the “Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-703. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-296 and transmitted to both Houses of Congress for its review. D.C. Law 10-176 became effective on September 22, 1994.

## § 45-1653.2. Choice of forum.

The rights provided under §§ 45-1653 and 45-1653.1 are in the alternative. The party bringing the action may choose the forum and need not exhaust administrative remedies in order to bring an action under § 45-1653. Unless all parties to the action agree otherwise, once an action has been brought in one forum, an action based on the same or a substantially similar cause of action may not be brought in any other forum. (Sept. 10, 1980, D.C. Law 3-86, § 503b, as added Sept. 22, 1994, D.C. Law 10-176, § 3(q), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(q), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 added this section.

**Temporary addition of section.** — D.C. Law 10-176 added this section.

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary addition of section, see § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(q) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 10-144.** — Law 10-144, the “Rental Housing Conversion and Sale Act of 1980 Extension and Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-243, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-251 and transmitted to both Houses of Congress for its review. D.C. Law 10-144 became effective on July 23, 1994.

**Legislative history of Law 10-176.** — Law 10-176, the “Rental Housing Conversion and

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Housing accommodation of five or more units — Party entitled to bring suit.** — An individual dissenting tenant to the sale of a housing accommodation has no right to assert a claim under § 45-1653 or this section against the owner for violation of the Act because when the accommodations consist of five or more units the tenant organization becomes the sole representative of the tenants. *Stanton v. Gerstenfeld*, App. D.C., 582 A.2d 242 (1990).

Sale Act of 1980 Reenactment and Amendment Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-703. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-296 and transmitted to both Houses of Congress for its review. D.C. Law 10-176 became effective on September 22, 1994.

**Legislative history of Law 11-31** — Law 11-31, the “Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-53, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 2, 1995, and June 6, 1995, respectively. Signed by the Mayor on June 16, 1995, it was assigned Act No. 11-63 and transmitted to both Houses of Congress for its review. D.C. Law 11-31 became effective on September 6, 1995.

**Reenactment of D.C. Law 3-86.** — See note to § 45-1601.

**Addition of § 45-1653.2 by Law 10-144.** — Section 2(q) of D.C. Law 10-144 purported to add a § 503b to D.C. Law 3-86 to be codified as § 45-1653.2 which read:

“The rights provided under §§ 45-1653 and 45-1653.1 are in the alternative. The party bringing the action may choose the forum and need not exhaust administrative remedies in

order to bring an action under § 45-1653. Unless all parties to the action agree otherwise, once an action has been brought in 1 forum, an action based on the same or a substantially

similar cause of action may not be brought in any other forum."

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

## § 45-1654. Notice of rejection.

If the Mayor determines to reject an application by a party pursuant to this chapter, he or she shall notify the applicant of the findings upon which the rejection is based, and that the rejection will be deemed final in 20 days. During the 20-day period, the applicant may petition for reconsideration, and, upon a proper showing of reasonable grounds, shall be entitled to a hearing to contest the particulars specified in the Mayor's rejection notice. Such notice of rejection shall not take effect during the pendency of a hearing, if requested. (Sept. 10, 1980, D.C. Law 3-86, § 504, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(g), 28 DCR 2824.)

**Section references.** — This section is referred to in § 45-1658.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1655. Investigations.

(a) The Mayor may make necessary public or private investigations in accordance with law within or without of the District of Columbia to determine compliance with the requirements of this chapter or to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge or relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance. (Sept. 10, 1980, D.C. Law 3-86, § 505, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Cited in Dyer v. District of Columbia Dep't of Hous. & Community Dev., App. D.C., 452 A.2d 968 (1982).**

## § 45-1656. Enforcement.

(a) The Mayor shall have the power to enforce this chapter and rules and regulations made hereunder. If the Mayor determines after notice and hearing that a person has: (1) violated any provision of this chapter; (2) violated any condition imposed in writing in connection with the granting of any application or other request under this chapter; or (3) violated any lawful order or rule of the agency; the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his or her judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order which shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation, or order hereunder, the Mayor with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(d) The Mayor may intervene in any civil action involving the enforcement of any right or provision under this chapter. The Mayor may require an owner, tenant, or tenant organization to notify the Mayor of any suit instituted pursuant to § 45-1653.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Sept. 10, 1980, D.C. Law 3-86, § 506, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824; Oct. 5, 1985, D.C. Law 6-42, § 410(a), 32 DCR 4450.)

**Section references.** — This section is referred to in §§ 45-1618 and 45-1658.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June

25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Damages not recoverable.** — Nothing in § 45-1653 suggests that plaintiffs can collect damages. On the contrary, the language of § 45-1653 allows plaintiffs to seek only enforcement of the act, costs, and reasonable attorney fees. The act specifically outlines civil and criminal penalties for violations of its provisions,

but contains nothing pertaining to damages. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

## § 45-1657. Revocation.

(a) A certificate issued pursuant to § 45-1611(a), an exemption issued pursuant to § 45-1611(b) or § 45-1618, or registration required pursuant to § 45-1640 may be revoked after notice and hearing upon a written finding of fact that the holder of the certificate, the holder of the exemption, or the registrant has:

- (1) Failed to comply with the terms of a cease and desist order;
- (2) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any certificate, exemption, or registration; or
- (3) Made intentional misrepresentations or concealed material facts in an application for a certificate, exemption, or registration.

(b) If the Mayor finds after notice and hearing that the holder of a certificate, the holder of an exemption, or the registrant has been guilty of a violation for which revocation could be ordered, the Mayor may issue a cease and desist order; or, upon adjudication for any infraction thereof, impose civil fines, penalties, and fees as alternative sanctions, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Sept. 10, 1980, D.C. Law 3-86, § 507, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824; Oct. 5, 1985, D.C. Law 6-42, § 410(b), 32 DCR 4450.)

**Section references.** — This section is referred to in § 45-1658.

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Legislative history of Law 6-42.** — See note to § 45-1656.

**Reenactment of Law 3-86.** — See note to § 45-1601.

## § 45-1658. Administrative proceedings.

(a) Any proceeding provided in § 45-1654, § 45-1656, or § 45-1657 shall be conducted according to §§ 1-1509 and 1-1510 and any officer designated to conduct such a proceeding shall not immediately supervise or be subject to supervision by any employee who participates or has participated in the investigation or prosecution of such case.

(b) After any hearing pursuant to this section, and within 10 days after the parties have been notified of the initial decision of the officer who conducted the hearing, if no appeal is taken or no determination is made to review the decision, the Mayor shall adopt and render the initial decision as the final decision and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of § 45-1654, § 45-1656, or § 45-1657, as appropriate.

(c) In the course of, or in connection with any such proceeding, the Mayor or any officer designated by rule may administer oaths or affirmations, take or cause depositions to be taken, subpoena witnesses and compel their atten-

dance, take evidence, and require the production of any matter which is relevant to the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(d) Upon failure to obey a subpoena or to answer questions propounded by the presiding officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance.

(e) Any service required or authorized to be made under this section may be made by registered mail or in such other manner reasonably calculated to give actual notice as the Mayor may by regulation or otherwise require. (Sept. 10, 1980, D.C. Law 3-86, § 508, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

## **§ 45-1659. Judicial review.**

(a) After the issuance of a final decision and order pursuant to this chapter, and within 15 days after the Mayor has notified the parties of the final decision and order, any party to such proceeding may seek judicial review of such decision and order by filing a petition for review in the District of Columbia Court of Appeals.

(b) Proceedings for judicial review of Mayoral actions shall be subject to and be in accordance with § 1-1510. (Sept. 10, 1980, D.C. Law 3-86, § 509, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

## **§ 45-1660. Penalties.**

Any person who wilfully violates any provision of this chapter or any rule adopted under or order issued pursuant to this chapter or any person who wilfully in an application makes any false statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is larger, but not more than \$50,000; or such person may be imprisoned for no more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Office of the Corporation Counsel. (Sept. 10, 1980, D.C. Law 3-86, § 510, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(i), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Damages not recoverable.** — Nothing in § 45-1653 suggests that plaintiffs can collect damages. On the contrary, the language of § 45-1653 allows plaintiffs to seek only enforcement of the act, costs, and reasonable attorney

fees. The act specifically outlines civil and criminal penalties for violations of its provisions, but contains nothing pertaining to damages. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

## § 45-1661. Statutory construction.

The purposes of this chapter favor resolution of ambiguity by the hearing officer or a court toward the end of strengthening the legal rights of tenants or tenant organizations to the maximum extent permissible under law. If this chapter conflicts with another provision of law of general applicability, the provisions of this chapter control. (Sept. 10, 1980, D.C. Law 3-86, § 511, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Purchase of property.** — Nothing in the act suggests that a landlord must offer to sell the property to the tenants for a lower price than that which was offered by a third-party purchaser. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

Where property consists of more than one unit, the tenants must purchase the complex in

its entirety rather than purchase one or two buildings individually. To do otherwise would decrease the value of the property and would allow the tenants to purchase the property without matching the third-party purchase price. Redmond v. Birkel, 797 F. Supp. 36 (D.D.C. 1992).

**Cited in** Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990); Green v. Gibson, App. D.C., 613 A.2d 361 (1992).

## § 45-1662. Declaration of continuing housing crisis.

(a) Within 1 month of the first annual anniversary date of the effective date of this chapter, and during the same period of each successive year, the Mayor shall determine and then declare whether there is a continuing housing crisis in the District. If the Mayor determines that at least 1 of the factors listed in subsection (b) of this section continue to exist, the Mayor shall declare that there is a continuing housing crisis. If the Mayor determines that none of the factors listed in subsection (b) of this section continue to exist, the Mayor shall declare there is no longer a housing crisis. The Mayor's declaration shall include the reasons for such determination.

(b) The factors which the Mayor shall consider in determining whether there is a continuing housing crisis in the District include, but are not limited to, the following:

(1) That the percentage of all rental housing units in the District which are vacant, habitable, and available for occupancy is less than 5%;

(2) That the number of new rental units made available for occupancy with the District of Columbia in the previous year is less than the number of units demolished, discontinued in use or converted to condominiums, cooperatives or nonhousing use;

(3) That the number of new or substantially rehabilitated units subsidized under federal or local publicly funded programs and made available for occupancy within the District of Columbia in the past year was less than 10,000 units; and

(4) The Mayor shall consider any other significant factors which relate to the supply of housing available for low-income District of Columbia citizens.

(c) If the Mayor declares that there is no longer a housing crisis within the District of Columbia, the Mayor shall submit a proposed resolution containing the declaration to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part, within the 45-day review period, the proposed resolution shall be deemed approved. Upon the effective date of Council approval of the Mayor's proposed resolution declaring that there is no longer a housing crisis in the District of Columbia, or upon a date specified in the resolution, whichever is later, the provisions of this chapter shall no longer be in effect. (Sept. 10, 1980, D.C. Law 3-86, § 512, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824; Sept. 22, 1994, D.C. Law 10-176, § 3(r), 41 DCR 5175; Sept. 6, 1995, D.C. Law 11-31, § 3(r), 42 DCR 3239.)

**Effect of amendments.** — D.C. Law 11-31 rewrote (c).

**Temporary amendment of section.** — D.C. Law 10-176 rewrote (c).

Section 4(b) of D.C. Law 10-176 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental Housing Conversion and Sale Act of 1994, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1994 (D.C. Act 10-285, July 8, 1994, 41 DCR 4904).

For temporary amendment of section, see § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Reenactment and Amendment Emergency Act of 1995 (D.C. Act 11-47, May 4, 1995, 42 DCR 2410) and § 3(r) of the Rental Housing Conversion and Sale Act of 1980 Re-enactment and Amendment Congressional Recess Emergency Act of 1995 (D.C. Act 11-96, July 19, 1995, 42 DCR 3837).

**Legislative history of Law 3-86.** — See note to § 45-1601.

**Legislative history of Law 4-27.** — See note to § 45-1612.

**Legislative history of Law 10-144.** — See note to § 45-1653.1.

**Legislative history of Law 10-176.** — See note to § 45-1653.1.

**Legislative history of Law 11-31.** — See note to § 45-1653.2.

**Reenactment of Law 3-86.** — See note to § 45-1601.

**Amendment of section by Law 10-144.** — Section 2(r) of D.C. Law 10-144 purported to amend (c) of this section to read as follows:

“(c) If the Mayor declares that there is longer a housing crisis within the District of Columbia, the Mayor shall submit a proposed resolution containing the declaration to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part, within the 45-day review period, the proposed resolution shall be deemed approved. Upon the effective date of Council approval of the Mayor's proposed resolution declaring that there is no longer a housing crisis in the District of Columbia, or upon a date specified in the resolution, whichever is later, the provisions of this chapter shall no longer be in effect.”

As to ineffectiveness of provisions of D.C. Law 10-144, see note to § 45-1601.

**Declaration of continuing housing crisis.** — See Mayor's Order 85-170, October 10, 1985.

## § 45-1663. Severability.

If any provision of this chapter, or any section, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of the chapter and of the application of any other provision, section, sentence, clause, phrase, or word shall not be affected. (Sept. 10, 1980, D.C. Law 3-86, § 513, 27 DCR 2975; Aug. 1, 1981, D.C. Law 4-27, § 2(h), 28 DCR 2824.)

**Legislative history of Law 3-86.** — See note to § 45-1601. **Cited in Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989).**

**Legislative history of Law 4-27.** — See note to § 45-1612.

## CHAPTER 17. HORIZONTAL PROPERTY REGIMES.

Sec.

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- 45-1702. Definitions.
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Sec.

- 45-1719. Supplemental method of enforcement of lien; rights and duties of subsequent purchaser; priority of lien, bond and trust; written statement of payments due under lien.
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- 45-1726. Rule against perpetuities and rule against unreasonable restraints on alienation not applicable to horizontal property regimes; exception for individual units.
- 45-1727. Chapter supplements existing code provisions; exception where conflict arises.
- 45-1728. Regulations of Council and Zoning Commission; enforcement thereof.
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- 45-1730. Chapter interpreted to require compliance with all applicable laws; owners' responsibilities for taxes; methods of collection; no effect on eminent domain.
- 45-1731. Right to individual water meters; common water service authorized; billing and collection.
- 45-1732. Authority vested in Board of Commissioners unaffected; delegation of functions.
- 45-1733. Severability.
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## § 45-1701. Short title.

This chapter, including its table of contents, may be cited as the “Horizontal Property Act of the District of Columbia.” (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 1; 1973 Ed., § 5-901.)

**Supersedure of chapter.** — The provisions of this chapter have been superseded by the provisions of chapter 18 of this title. See § 45-1801(c).

Cited in Johnson v. Hobson, App. D.C., 505 A.2d 1313 (1986).

## § 45-1702. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(1) “Unit” or “condominium unit” means an enclosed space, consisting of 1 or more rooms, occupying all or part of 1 or more floors in buildings of 1 or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, and shall include such accessory units as may be appended thereto, such as garage space, storage space, balcony, terrace or patio; provided, that said unit has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.

(2) “Condominium” means the ownership of single units in a multiunit project with common elements.

(3) “Condominium project” or “project” means a real estate condominium project; a plan or project condominium project; a plan or project whereby 5 or more apartments, rooms, office spaces, buildings, or other units, which may be either contiguous or detached, in existing or proposed buildings or structures are offered or proposed to be offered for sale.

(4) “Co-owner” means a person, persons, corporation, trust, or other legal entity, or any combination thereof, that owns a condominium unit within the building.

(5) “Council of co-owners” means the co-owners as defined in paragraph (4) of this section, acting as a group in accordance with the provisions of this chapter and the bylaws and declaration established thereunder; and a majority, as defined in paragraph (8) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions.

(6) “General common elements” except as otherwise provided in the plat of condominium subdivision, means and includes:

(A) The land on which the building stands in fee simple or leased provided that the leasehold interest of each unit is separable from the leasehold interests of the other units;

(B) The foundations, main walls, roofs, halls, columns, girders, beams, supports, corridors, fire escapes, lobbies, stairways, and entrance and exit or communication ways;

(C) The basements, flat roofs, yards, and gardens except as otherwise provided or stipulated;

(D) The premises for lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

(E) The compartments or installations of central services such as power, light, gas, cold and hot water, heating, central air conditioning or central refrigeration, swimming pools, reservoirs, water tanks and pumps, and the like;

(F) The elevators, garbage and trash incinerators and, in general, all devices or installations existing for common use; and

(G) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety.

(7) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of condominium units, such as special corridors, stairways, and elevators, sanitary services common to the apartments of a particular floor, and the like.

(8) "Majority of co-owners," "two-thirds of the co-owners," and "three-fourths of the co-owners" mean, respectively, 51%, 66 $\frac{2}{3}$ %, and 75% or more of the votes of the co-owners computed in accordance with their percentage interests as established under § 45-1706.

(9) "Plat of condominium subdivision" means the plat of the surveyor of the District of Columbia establishing the condominium units, accessory units, general common elements, and limited common elements.

(10) "Person" means a natural individual, corporation, trustee, or other legal entity or any combination thereof.

(11) "Developer" means a person that undertakes to develop a real estate condominium project.

(12) "Property" means and includes the lands whether leasehold, if separable as defined in subparagraph (A) of paragraph (6) of this section, or in fee simple, the building, all improvements and structures thereon, and all easements, rights, and appurtenances thereunto belonging.

(13) "To record" means to record in accordance with the provisions of § 45-801.

(14) "Common expenses" means and includes;

(A) All sums lawfully assessed against the unit owners by the council of co-owners;

(B) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities, including repair and replacement funds as may be established;

(C) Expenses agreed upon as common expenses by the council of co-owners; and

(D) Expenses declared common expenses by the provisions of this chapter or by the bylaws.

(15) "Common profits" means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after deduction of the common expenses.

(16) All words used herein include the masculine, feminine, and neuter genders and include the singular or plural numbers, as the case may be. (Dec. 21, 1963, 77 Stat. 449, Pub. L. 88-218, § 2; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(a), (b); 1973 Ed., § 5-902; May 22, 1975, D.C. Law 1-3, § 2(1), 21 DCR 3944.)

**Legislative history of Law 1-3.** — Law 1-3, the “Horizontal Property Act Amendment Act of 1975,” was introduced in Council and assigned Bill No. 1-12, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on February 25, 1975, and March 11, 1975, respectively. Signed by the Mayor on March 27, 1975, it was assigned Act No. 1-5 and transmitted to both Houses of Congress for its review.

**Supersedure of chapter.** — See note to § 45-1701.

**“General common elements”.** — In a suit by the board of directors of a condominium association protesting the construction of the subway, matters encompassed by the settlement agreement, including regulation of construction and vibration from trains, are rationally necessary for the condominium’s existence, upkeep and safety, which matters fall within the statutory definition of “general common elements.” *Owens v. Tiber Island Condominium Ass’n*, App. D.C., 373 A.2d 890 (1977).

## § 45-1703. Establishment by subdivision.

Whenever the owners or the co-owners of any square or lot shall subdivide the same into a condominium project in conformity with § 45-1709 with a plat of condominium subdivision there shall be established a horizontal property regime. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 3; 1973 Ed., § 5-903.)

**Section references.** — This section is referred to in §§ 47-803, 47-813 and 47-1002.

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1704. Transfer of individual units; incidents of real property; recordation.

Once the property is subdivided into the horizontal property regime, a condominium unit in the project may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the project of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 4; 1973 Ed., § 5-904; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1705. Joint tenancies, tenancies in common, tenancies by the entirety.

Any condominium unit may be held and owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real property tenancy relationship recognized under the laws of the District of Columbia. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 5; 1973 Ed., § 5-905.)

**Supersedure of chapter.** — See note to § 45-1701.

**§ 45-1706. Units held in fee; common elements held in undivided shares; recordation of declaration of ownership percentages; market values of units and shares not fixed; voting on basis; unit deeds.**

(a) A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

(b) Said percentage interest shall not be separated from the unit to which it appertains.

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the project, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the government of the United States and the government of the District of Columbia acting in the performance of their official duties.

(d) The said basic value of said undivided common interest shall be fixed for the purposes of this chapter and shall not fix the market value of the individual condominium units and undivided share interests and shall not prevent each co-owner from fixing a different circumstantial value to his condominium unit and undivided share interest in the common elements, in all types of acts and contracts.

(e) In addition to the foregoing provisions, the declaration may contain other provisions and attachments relating to the condominium and to the units which are not inconsistent with this chapter.

(f) Voting at all meetings of the co-owners shall be on a percentage basis, and the percentage of the vote to which each co-owner is entitled shall be the individual percentage assigned to his unit in the declaration.

(g) Individual condominium unit deeds may make reference to this chapter, the condominium subdivision and land subdivision plats referred to in § 45-1710 hereof, the declaration provided for in this section, the bylaws of the council of co-owners, and the deeds may include any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this chapter. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 6; 1973 Ed., § 5-906; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Section references.** — This section is referred to in §§ 45-1702, 45-1711, 45-1713, 45-1714, 45-1716, 45-1723, 45-1724, 45-1725 and 45-1731.

**Legislative history of Law 1-3.** — See note to § 45-1702.

## § 45-1707. Indivisibility of common elements; limitation upon partition; exception thereto.

(a) The common elements, both general and limited, shall remain undivided. No unit owner, or any other person, shall bring any action for partition or division of the co-ownership permitted under § 93, and related provisions, of the Act of March 3, 1901 (31 Stat. 1203), as amended by the Act of June 30, 1902 (32 Stat. 523, ch. 1329), against any other owner or owners of any interest or interests in the same horizontal property regime so as to terminate the regime.

(b) Nothing contained in this section shall be construed as a limitation on partition by the owners of 1 or more units in a regime as to the individual ownership of such unit or units without terminating the regime or as to the ownership of property outside the regime; provided, that upon partition of any such individual unit the same shall be sold as an entity and shall not be partitioned in kind. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 7; 1973 Ed., § 5-907.)

**Cross references.** — As to partition actions, see § 16-2901.

**Section references.** — This section is referred to in § 45-1711.

## § 45-1708. Use of elements held in common; right to enter units for certain repairs.

(a) Each co-owner may use the elements held in common in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(b) The manager, board of directors or of administration, as the case may be, shall have an irrevocable right and an easement to enter units to make repairs to common elements or when repairs reasonably appear to be necessary for public safety or to prevent damage to property other than the unit. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 8; 1973 Ed., § 5-908.)

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1709. Plat of condominium subdivision — Contents thereof; certification and recordation.

(a) Whenever the owner or the co-owners of any square or lot duly subdivided in conformity with § 1-920 or other applicable laws of the District of Columbia shall deem it necessary to subdivide the same into a condominium

**Supersedure of chapter.** — See note to § 45-1701.

**Cited** in Green v. Condominium Mgt., Inc., 114 WLR 157 (Super. Ct. 1986).

project of convenient condominium units for sale and occupancy and means of access for their accommodation, he may cause a plat or plats to be made by the surveyor of the District of Columbia, on which said plats, together, shall be expressed:

(1) The ground dimensions as set forth under such § 1-920 and the exterior lengths of all lines of the building;

(2) For each floor or floors, in the instance of condominium units consisting of more than 1 floor, of the condominium subdivision, the number or letter, dimensions, and lengths of finished interior surfaces of unit dividing walls of the individual condominium units; the elevations (or average elevation, in case of slight variance) from a fixed known point, of finished floors and of finished ceilings of such condominium units situate upon the same floor, and further expressing the area, the relationship of each unit to the other upon the same floor and their relationship to the common elements upon said floor; provided, that when a unit is situated on more than 1 floor, access shall be provided within the unit between the portion of the unit on any 1 floor and the portion of the unit on any other floor in addition to any outside access which might be provided to any portion of the unit;

(3) The dimensions and lengths of the interior finished surface of walls, elevations, from said same fixed known point, of the finished floors and of the finished ceilings of the general common elements of the building, and, in proper case, of the limited common elements restricted to a given number of condominium units, expressing which are those units; and

(4) Any other data necessary for the identification of the individual condominium units and the general and limited common elements.

(b) And said owners or co-owners may certify such condominium subdivisions under their hands and seals in the presence of 2 credible witnesses, upon the same plat or on a paper or a parchment attached thereto. And the same shall thereupon be put up, labeled, indexed, and preserved for record and deposit with the office of the surveyor for the District of Columbia in like manner as land subdivisions have been heretofore recorded or in such other books as the said surveyor may prescribe. (Dec. 21, 1963, 77 Stat. 452, Pub. L. 88-218, § 9; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(c); 1973 Ed., § 5-909.)

**Section references.** — This section is referred to in § 45-1703.

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1710. Same — Reference thereto for description; conveyance of unit includes share in common elements.

When a plat of a condominium project and subdivision shall be so certified, examined, and recorded, the purchaser of any condominium unit thereof or any person interested therein may refer to the plat and record for description in the same manner as to squares and lots divided between the Mayor of the District of Columbia and the original proprietors and in the same manner as has been heretofore the practice for land subdivisions; provided, that said purchaser or

other person interested therein shall also make reference to the plat of land subdivision appearing prior to the establishment of the condominium subdivision thereupon. Any such conveyance of an individual condominium unit shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, and of any accessory units, if any, appertaining to said condominium unit without specifically or particularly referring to the same. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 10; 1973 Ed., § 5-910.)

**Section references.** — This section is referred to in §§ 45-1706 and 45-1711.

**Supersedure of chapter.** — See note to § 45-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-1711. Termination and waiver of regime; certification upon plat; judicial termination; ownership after termination; condominium restrictions not applicable after termination or partition.

(a) All the co-owners or the sole owner of a project constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of 2 credible witnesses, upon the same plat or upon a paper or parchment attached thereto; provided, that the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment; provided further, that should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver; provided further, that if within 90 days of the date of such damage or destruction: (1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in §§ 45-1721 and 45-1722 or; (2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of § 45-1721 and if the co-owners do not terminate and waive the

regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the Superior Court of the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the bylaws in conformity with § 45-1714(a)(7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

(b) In the event a horizontal property regime is terminated or waived, the property shall be deemed to be owned in common by the co-owners, and the undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such co-owner in the common elements in the property as set forth in the declaration under § 45-1706.

(c) Upon such termination and waiver the provisions of § 45-1710 shall no longer be applicable and reference to the principal project thereupon shall be to the plat and record of the prior land subdivision and thereupon the restraint against partition or division of the co-ownership imposed by § 45-1707 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (Dec. 21, 1963, 77 Stat. 453, Pub. L. 88-218, § 11; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(d); July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(20); 1973 Ed., § 5-911; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

## **§ 45-1712. Merger no bar to reconstitution.**

The merger provided for in the preceding section shall in no way bar the subsequent constitution of the property into another horizontal property regime whenever so desired and upon observance of the provisions of this chapter. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 12; 1973 Ed., § 5-912.)

**Supersedure of chapter.** — See note to § 45-1701.

**§ 45-1713. Bylaws — Availability for examination; made part of declaration; amendment; compliance mandatory.**

(a) The administration of every project constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in § 45-1706 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(b) A true copy of said bylaws shall be annexed to the declaration referred to in § 45-1706 and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

(c) Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager, the administrator, board of directors or of administration, or as specified in the bylaws or in proper case, by an aggrieved unit owner. (Dec. 21, 1963, 77 Stat. 454, Pub. L. 88-218, § 13; 1973 Ed., § 5-913; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

**§ 45-1714. Same — Necessary; modification of administration.**

(a) The bylaws must necessarily provide for at least the following:

(1) Form of administration, indicating whether this shall be in charge of an administrator, manager, or of a board of directors, or of administration, or otherwise, and specifying the powers, manner of removal, and, where proper, the compensation thereof;

(2) Method of calling or summoning the co-owners to assemble; that a majority of co-owners is required to adopt decisions, except as otherwise provided in this chapter; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded;

(3) Care, upkeep, and surveillance of the project and its general or limited common elements and services;

(4) Manner of collecting from the co-owners for the payment of common expenses;

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the project and for the proper care of the general or limited common elements and to provide services for the project;

(6) Such restrictions on or requirements respecting the use and maintenance of the units and the use of the common elements as are designed to prevent unreasonable interference with the use of the respective units and of the common elements by the several unit owners;

(7) Designation of person authorized to accept service of process in any action relating to 2 or more units or to the common elements as authorized under § 45-1724. Such person must be a resident of and maintain an office in the District of Columbia; and

(8) Notice as to the existence or nonexistence of a declaration in trust for the enforcement of the lien for common expenses permitted under § 45-1719.

(b) The sole owner of the project, or if there be more than 1, the co-owners representing two-thirds of the votes provided for in § 45-1706 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 14; 1973 Ed., § 5-914; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Section references.** — This section is referred to in §§ 45-1711, 45-1724, and 45-1725.

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1715. Books of receipts and expenditures; availability for examination; annual audit.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 15; 1973 Ed., § 5-915; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

## § 45-1716. Common profits and expenses; taxation; proportional contributions for administration and maintenance mandatory; determination of amount due and assessment of lien.

(a) The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the

percentages established by § 45-1706; provided, that for purposes of the application of subchapter II of Chapter 18 of Title 47, the council of co-owners shall, in accordance, with the provisions of said subchapter, be regarded as constituting an unincorporated business and shall file returns and pay taxes upon the taxable income derived from the common areas without regard to the "common profits" as defined in this chapter.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements, and, in proper case, of the limited common elements of the project and toward any other expenses lawfully agreed upon by the council of co-owners.

(c) No owner shall be exempt from contributing toward such common expenses by waiver of the use or enjoyment of the common elements both general and limited, or by the abandonment of the condominium unit belonging to him.

(d) Said contribution may be determined, levied, and assessed as a lien on the first day of each calendar or fiscal year, and may become and be due and payable in such installments as the bylaws may provide, and said bylaws may further provide that upon default in the payment of any 1 or more of such installments, the balance of said lien may be accelerated at the option of the manager, board of directors, or of management and be declared due and payable in full. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 16; 1973 Ed., § 5-916; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Section references.** — This section is referred to in §§ 45-1717, 45-1718, and 45-1719.

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to § 45-1701.

**Amounts due association may be recovered in action at law.** — Amounts due to a

condominium association may be, but are not required to be, assessed as liens against the property, and where the association did not purport to file any such lien, it may file an action to recover such amounts in an action at law. *Owens v. Tiber Island Condominium Ass'n*, App. D.C., 373 A.2d 890 (1977).

## § 45-1717. Priority of liens; unpaid assessments upon sale or conveyance.

(a) The lien determined, levied and assessed in accordance with § 45-1716 shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

(1) Real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and water charges and sanitary sewer service charges levied on the condominium unit, and judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and

judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this paragraph.

(2) The liens of any deeds of trust, mortgage instruments, or encumbrances duly recorded on the condominium unit prior to the assessment of the lien thereon or duly recorded on said unit after receipt of a written statement from the manager, board of directors, or of management reflecting that payments on said lien were current as of the date of recordation of said deed of trust, mortgage instrument, or encumbrance.

(b) Upon a voluntary sale or conveyance of a condominium unit all unpaid assessments against a grantor co-owner for his pro rata share of the expenses to which § 45-1716 refers shall first be paid out of the sales price or by the grantee in the order of preference set forth above. Upon an involuntary sale through foreclosure of a deed of trust, mortgage, or encumbrance having preference as set forth in paragraph (2) of subsection (a) of this section a purchaser thereunder shall not be liable for any installments of such lien as became due prior to his acquisition of title. Such arrears shall be deemed common expenses, collectible from all co-owners, including such purchaser. (Dec. 21, 1963, 77 Stat. 456, Pub. L. 88-218, § 17; 1973 Ed., § 5-917.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

### **§ 45-1718. Joint and several liability of purchaser and seller of unit for amounts owing under § 45-1716; purchaser's right of indemnity; right to statement of amount of unpaid assessments.**

The purchaser of a condominium unit in a voluntary sale shall be jointly and severally liable with the seller for the amounts owing by the latter under § 45-1716 upon his interest in the condominium unit up to the time of conveyance; without prejudice to the purchaser's right to recover from the other party the amounts paid by him as such joint debtor; provided, that any such purchaser, or a lender under a deed of trust, mortgage, or encumbrance, or parties designated by them, shall be entitled to a statement from the manager, board of directors, or of administration, as the case may be, setting forth the amount of unpaid assessments against the seller or borrower, and the unit conveyed or encumbered shall not be subject to a lien for any unpaid assessment in excess of the amount set forth. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 18; 1973 Ed., § 5-918.)

**Section references.** — This section is referred to in § 45-1719.

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1719. Supplemental method of enforcement of lien; rights and duties of subsequent purchaser; priority of lien, bond and trust; written statement of payments due under lien.**

(a) In addition to proceedings available at law or equity for the enforcement of the lien established by § 45-1716, all the owners of property constituted into a horizontal property regime may execute bonds conditioned upon the faithful performance and payment of the installments of the lien permitted by § 45-1716 and may secure the payment of such obligations by a declaration in trust recorded among the land records of the District of Columbia, granting unto a trustee or trustees appropriate powers to the end that upon default in the performance of such bond, said declaration in trust may be foreclosed by said trustee or trustees, acting at the direction of the manager, board of directors, or of management, as is proper practice in the District of Columbia in foreclosing a deed of trust.

(b) And the bylaws may require in the event such bonds have been executed and such declaration in trust is recorded that any subsequent purchaser of a condominium unit in said horizontal property regime shall take title subject thereto and shall assume such obligations; provided, that the said lien, bond, and declaration in trust shall be subordinate to and a junior lien to liens for real estate taxes and other taxes arising out of or resulting from the ownership, use, or operation of the common areas, liens for special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, and liens for water charges and sanitary sewer service charges levied on the condominium unit, and to judgments, liens, preferences, and priorities for any tax assessed against a co-owner by the United States or the District of Columbia or due from or payable by a co-owner to the United States or the District of Columbia, and to judgments, liens, preferences, and priorities in favor of the District of Columbia for assessments or charges referred to in this section then or thereafter accruing against the unit and to the lien of any duly recorded deeds of trust, mortgages, or encumbrances previously placed upon the unit and said lien, bond, and declaration in trust shall be and become subordinate to any subsequently recorded deeds of trust, mortgages, or encumbrances: Provided, that the lender thereunder shall first obtain from the manager, board of directors, or of administration a written statement as provided in § 45-1718 reflecting that payments due under this lien are current as of the date of recordation of such subsequent deed of trust, mortgage, or encumbrance. (Dec. 21, 1963, 77 Stat. 457, Pub. L. 88-218, § 19; 1973 Ed., § 5-919.)

**Section references.** — This section is referred to in § 45-1714.

**Supersedure of chapter.** — See note to § 45-1701.

**§ 45-1720. Authority to obtain hazard insurance; held in trust; no effect on right to insure individual unit.**

The manager or the board of directors, if required by the bylaws or by a majority of the co-owners, or at the request of a mortgagee having a first mortgage of record covering a unit, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the council of co-owners, as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 20; 1973 Ed., § 5-920.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1721. Application of insurance proceeds to reconstruction; pro rata distribution in certain cases according to bylaws or decision of council.**

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding subsection of this section, be applied to reconstruct the project.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the project and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 21; 1973 Ed., § 5-921; May 22, 1975, D.C. Law 1-3, § 2(2), (3), 21 DCR 3945.)

**Section references.** — This section is referred to in § 45-1711.

**Legislative history of Law 1-3.** — See note to § 45-1702.

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1722. Sharing of reconstruction cost where project not insured or insurance indemnity insufficient.**

Where the project is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new project costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any 1 or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under § 45-1717. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 22; 1973 Ed., § 5-922; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

**Section references.** — This section is referred to in § 45-1711.

**Supersedure of chapter.** — See note to § 45-1701.

**Legislative history of Law 1-3.** — See note to § 45-1702.

**§ 45-1723. Unit identification; taxation of unit and proportionate share of common area; effect of forfeiture or tax sale of other units.**

(a) For the purposes of assessment and taxation of property constituted into a horizontal property regime and to conform to the system of numbering squares, lots, blocks, and parcels for taxation purposes in effect in the District of Columbia, each condominium unit duly situate upon a subdivided lot and square shall bear a number or letter that will distinguish it from every other condominium unit situate in said lot and square.

(b) Each of said condominium units shall be carried on the records of the District of Columbia as a separate and distinct entity and all real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas, special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads, and avenues, removal or abatement of nuisances, and special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, shall be assessed, levied, and collected against each of said several separate and distinct units in conformity with the percentages of co-ownership established by § 45-1706, and in accordance with the provisions of law in effect in the District of Columbia relating to assessment, levying, and collection of real property taxes.

(c) The council of co-owners shall be liable for the filing of returns and payment of the tax on personal property located in the common areas and held for use or used in a trade or business or held for sale or rent.

(d) The title to an individual condominium unit shall not be divested or in anywise affected by the forfeiture or sale of any or all of the other condominium

units for delinquent real estate taxes, other taxes arising out of or resulting from the ownership, use, or operation of the common areas; special assessments, including, but not limited to, special assessments for sewer mains, water mains, curbs, gutters, sidewalks, alleys, paving of streets, roads and avenues, removal or abatement of nuisances, special assessments levied in connection with condemnation proceedings instituted by the District of Columbia, or water charges and sanitary sewer service charges; provided, that the real estate taxes, the duly levied share of such other taxes and of such special assessments, and the water and sanitary sewer service charges on or against said individual condominium unit are currently paid. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 23; 1973 Ed., § 5-923.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

### **§ 45-1724. Actions relating to common elements; service of process; removal of lien on proportionate share of common areas following judgment against other unit owners.**

(a) Without limiting the right of any co-owner, actions may be brought on behalf of 2 or more of the unit owners, as their respective interests may appear, by the manager, or board of directors, or of administration with respect to any cause of action relating to the common elements or more than 1 unit.

(b) Service of process on 2 or more unit owners in any action relating to the common elements may be made on the person designated in the bylaws in conformity with § 45-1714(a)(7).

(c) In the event of entry of a final judgment as a lien against 2 or more unit owners, the unit owners of the separate units may remove their unit and their percentage interest in the common elements from the lien thereof by payment of the fractional proportional amounts attributable to each of the units affected. Said individual payment shall be computed by reference to the percentage established pursuant to § 45-1706. After such partial payment, partial discharge, or release or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of the lien of such judgment.

(d) Such partial payment, satisfaction, or discharge shall not prevent such a judgment creditor from proceeding to enforce his rights against any unit and its percentage interest in the common elements not so paid, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 24; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(e); 1973 Ed., § 5-924.)

**Section references.** — This section is referred to in § 45-1714.

**Supersedure of chapter.** — See note to  
§ 45-1701.

**Action authorized.** — The bringing of an action protesting the construction of the subway in an area where the condominium is located falls within the provision of a bylaw

authorizing the board of directors to enforce, by litigation, the bylaws as well as to maintain any proceeding authorized by this chapter, which itself authorizes the suit. *Owens v. Tiber Island Condominium Ass'n*, App. D.C., 373 A.2d 890 (1977).

A suit by the board of directors of a condominium association protesting the construction

of the subway is related to "common elements or more than 1 unit" within the meaning of this section. *Owens v. Tiber Island Condominium Ass'n*, App. D.C., 373 A.2d 890 (1977).

**Assessment of legal fees.** — A nonplaintiff condominium owner's due process rights were

not violated by an assessment schedule basing each co-owner's share of the costs of a suit brought by the condominium association on his percentage of ownership. *Owens v. Tiber Island Condominium Ass'n*, App. D.C., 373 A.2d 890 (1977).

## **§ 45-1725. Liens available only against individual units; consent necessary for mechanics' or materialmen's liens; removal of lien on unit and proportionate share of common area following judgment against other unit owners.**

(a) Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created and enforced only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel or real property subject to individual ownership; provided, that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to the provisions of § 38-101, against the unit or any other property of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the council of co-owners, the manager, or board of directors in accordance with this chapter, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 38-101, against each of the units and shall be subject to the provisions of subsection (b) hereunder. Notice of said lien may be served on the person designated in conformity with § 45-1714(a)(7).

(b) In the event of filing of a lien against 2 or more units and their respective percentage interest in the common elements, the unit owners of the separate units may remove their unit and their percentage interest in the common elements appurtenant thereto from the said lien by payment, or may file a written undertaking with surety approved by the court as provided in § 38-118, of the fractional or proportional amounts attributable to each of the units affected. Said individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to § 45-1706. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the unit and its percentage interest in the common elements shall thereafter be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and its percentage interest in the common

elements not so paid, indemnified, satisfied, or discharged. (Dec. 21, 1963, 77 Stat. 459, Pub. L. 88-218, § 25; Aug. 21, 1964, 78 Stat. 586, Pub. L. 88-475, § 1(f); 1973 Ed., § 5-925.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1726. Rule against perpetuities and rule against unreasonable restraints on alienation not applicable to horizontal property regimes; exception for individual units.**

The rule of property known as the rule against perpetuities, and the rule of property known as the rule restricting unreasonable restraints on alienation, §§ 45-302 and 45-304, shall not be applied to defeat any of the provisions of this chapter, or of any declaration, bylaws, or other document executed in accordance with this chapter as to the condominium project. This exemption shall not apply to estates in the individual condominium units. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 26; 1973 Ed., § 5-926.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1727. Chapter supplements existing code provisions; exception where conflict arises.**

The provisions of the chapter shall be in addition to and supplemental to all other provisions of law of the District of Columbia and wheresoever there appears in the provisions the words "square", "lot", "land", "ground", "parcel", "property", "block", or other designation denoting a unit of land, where appropriate to implement this chapter, after such descriptive terms, there shall be deemed inserted reference to a condominium unit, condominium subdivision, or horizontal property regime, whichever shall be appropriate to effect the ends and purposes of this chapter; provided, that wherever the application of the provisions of this chapter conflict with the application of such other provisions, the provisions of law generally applicable to buildings in like use in the District of Columbia shall prevail. (Dec. 21, 1963, 77 Stat. 460, Pub. L. 88-218, § 27; 1973 Ed., § 5-927.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

**§ 45-1728. Regulations of Council and Zoning Commission; enforcement thereof.**

In order to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia, the Council of the District of Columbia and the Zoning Commission of the District of Columbia are each hereby authorized to adopt such regulations as either deems proper, within its

respective general authority, and the Mayor of the District of Columbia and the Zoning Commission are each hereby authorized to enforce such regulations, within its respective general authority. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 28; 1973 Ed., § 5-928.)

**Supersedure of chapter.** — See note to § 45-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(132) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-1729. Council authorized to prohibit conversions to condominiums.

In addition to other authority delegated to it, and in accordance with § 406 of Reorganization Plan No. 3 of 1967, the Council of the District of Columbia is authorized, by regulation, to prohibit the establishment, after the effective date of such regulation, of any horizontal property regime, real estate condominiums project, or other conversion of units in a multiunit structure into a condominium pursuant to this chapter. (1973 Ed., § 5-928a; Aug. 29, 1974, 88 Stat. 794, Pub. L. 93-395, § 2.)

**References in text.** — Reorganization Plan No. 3 of 1967, referred to in this section, is set forth in its entirety in Volume 1 at page 126.

**Supersedure of chapter.** — See note to § 45-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-1730. Chapter interpreted to require compliance with all applicable laws; owners' responsibilities for taxes; methods of collection; no effect on eminent domain.

(a) This chapter shall be interpreted in such a manner as to require each condominium unit and each horizontal property regime to be in compliance with all District of Columbia laws and regulations relating to property of like type, whether it be designed for residence, for office, for the operation of any industry or business, or for any other use. The owner of each condominium unit shall be responsible for the compliance of his unit with such laws and

regulations, and the council of co-owners and any person designated by them to manage the regime shall be jointly and severally liable for compliance with all such laws and regulations in all matters relating to the common elements of the regime.

(b) Notwithstanding any provision of this chapter, the owner of each condominium unit shall have the same responsibility for the payment of all taxes, assessments, and other charges due to the District of Columbia as does any other person or property owner similarly situated.

(c) Notwithstanding any provision of this chapter, the method of enforcement available to the District of Columbia to collect any tax or assessment or any charge from any individual property owner or any building owner shall be available to collect taxes, assessments, and charges from individual condominium unit owners and from the council of co-owners.

(d) Nothing contained in this chapter shall in any way be construed as affecting the right to institute and maintain eminent domain proceedings. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 29; 1973 Ed., § 5-929.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

### **§ 45-1731. Right to individual water meters; common water service authorized; billing and collection.**

(a) Notwithstanding any provision of this chapter, the developer or co-owners of any horizontal property regime shall have the right to have installed for each and every individual unit a separately metered water service. Such installations shall be subject to all laws and regulations then or thereafter in effect in the District of Columbia. Upon the establishment of such separate water services each unit owner and his successor in title and persons occupying such units shall be responsible for the payment to the District of Columbia of all water and sewer charges rendered and the Mayor of the District of Columbia is authorized to enforce any and all of the remedies for collection of such charges as are authorized by law.

(b) A common water service is hereby expressly authorized for any horizontal property regime and in the event that a horizontal property regime is provided with a common water service to the charges for sewer and water service shall be billed to the person designated by the co-owners, pursuant to the bylaws, to manage the regime. In the event that the entire sewer and water charges are not paid within the time specified by law for the payment of sewer and water charges, the Mayor shall be authorized to enforce payment in any manner authorized by law, including, but not limited to, the assessment of an additional charge for late payment, the shutting off of water to the regime and the enforcement of the liens for nonpayment of such charges against the individual units in conformity with the percentage of co-ownership established by § 45-1706. (Dec. 21, 1963, 77 Stat. 461, Pub. L. 88-218, § 30; 1973 Ed., § 5-930.)

**Supersedure of chapter.** — See note to § 45-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 45-1732. Authority vested in Board of Commissioners unaffected; delegation of functions.

Nothing in this chapter or in any amendments made by this chapter shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with § 3 of such Plan. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 31; 1973 Ed., § 5-931.)

**Supersedure of chapter.** — See note to § 45-1701.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively.

## § 45-1733. Severability.

If any provision of this chapter, or any section, sentence, clause, phrase, or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 32; 1973 Ed., § 5-932.)

**Supersedure of chapter.** — See note to § 45-1701.

**§ 45-1734. Effective date.**

This chapter shall take effect on April 19, 1964. (Dec. 21, 1963, 77 Stat. 462, Pub. L. 88-218, § 33; 1973 Ed., § 5-933.)

**Supersedure of chapter.** — See note to  
§ 45-1701.

## CONDOMINIUMS

### CHAPTER 18. CONDOMINIUMS.

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*Subchapter I. General Provisions.*

**§ 45-1801. Applicability of chapter; corresponding terms; supersedure of prior law.**

(a) This chapter shall apply to all condominiums created in the District of Columbia after March 29, 1977. Sections 45-1803 through 45-1806, 45-1813, 45-1816 through 45-1819, 45-1839.1, 45-1845(d), 45-1848(a)(1) through (6), 45-1848(a)(11) through (16), 45-1849, 45-1853, 45-1854, 45-1860, 45-1871, 45-1873 through 45-1877, and 45-1802, to the extent necessary in construing any of those sections, shall apply to any condominium and to any horizontal property regime or condominium project created in the District of Columbia before March 29, 1977, except that these sections shall apply only with respect to an event or circumstance that occurs after March 29, 1977 and shall not invalidate any existing provision of the condominium instruments of any condominium, horizontal property regime, or condominium project.

(b) For the purposes of this chapter:

(1) The terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium";

(2) The term "co-owner" shall be deemed to correspond to the term "unit owner";

(3) The term "council of co-owners" shall be deemed to correspond to the term "unit owners' association";

(4) The term "developer" shall be deemed to correspond to the term "declarant"; and

(5) The term "general common elements" shall be deemed to correspond to the term "common elements."

(c) This chapter shall supersede Chapter 17 of this title, and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this chapter after March

28, 1977. This chapter shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of Chapter 17 of this title and recorded prior to March 28, 1977. Except for § 45-1871, subchapter IV shall not apply to any condominium created prior to March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this chapter and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this chapter, any correlative obligation, liability, or restriction in this chapter shall apply to that person.

(d) This chapter shall not apply to any condominium located outside the District of Columbia. Sections 45-1862 through 45-1868 and §§ 45-1872 through 45-1877 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under § 45-1861.

(e) Except as otherwise provided in this chapter, amendments to this chapter shall not invalidate any provision of any condominium instrument which was permitted under this chapter at the time the provision was recorded. (1973 Ed., § 5-1201; Mar. 29, 1977, D.C. Law 1-89, title I, § 101, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(a), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(a), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(a), 39 DCR 683.)

**Section references.** — This section is referred to in § 45-1603.

**Legislative history of Law 1-89.** — Law 1-89, the “Condominium Act of 1976,” was introduced in Council and assigned Bill No. 1-179, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 29, 1976, and July 20, 1976, respectively. Signed by the Mayor on August 6, 1976, it was assigned Act No. 1-151 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — Law 9-38, the “Condominium Act of 1976 Technical and Clarifying Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-234. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-75 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-82.** — Law 9-82, the “Condominium Act of 1976 Technical and Clarifying Amendment Act of 1992,” was introduced in Council and assigned Bill No.

9-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1991, and January 7, 1992, respectively. Signed by the Mayor on January 28, 1992, it was assigned Act No. 9-140 and transmitted to both Houses of Congress for its review. D.C. Law 9-82 became effective on March 20, 1992.

**Common-law remedies not preempted or precluded by chapter.** — There is nothing in the Condominium Act, or its history, which indicates that it was meant to preempt and/or preclude common-law remedies. *Towers Tenant Ass'n v. Towers Ltd. Partnership*, 563 F. Supp. 566 (D.D.C. 1983).

**Provisions enacted subsequent to purchase and recordation of documents.** — Absent some evidence of acquiescence by condominium owner, power of sale mechanism in § 45-1853(c), enacted after the condominium documents were recorded and after the owner purchased his unit, could not be interpreted to apply retroactively to alter the contractual right between condominium owners and their owners' associations. *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, App. D.C., 548 A.2d 87 (1988).

**Cited** in *Dresser v. Sunderland Apts. Tenants Ass'n*, App. D.C., 465 A.2d 835 (1983);

Silverman v. Barry, 727 F.2d 1121 (D.C. Cir. 1984); Johnson v. Hobson, App. D.C., 505 A.2d 1313 (1986).

## § 45-1802. Definitions.

For the purposes of this chapter:

(1) "Common elements" shall mean all portions of the condominium other than the units.

(2) "Common expenses" shall mean all lawful expenditures made or incurred by or on behalf of the unit owners' association, together with all lawful assessments for the creation and maintenance of reserves pursuant to the provisions of the condominium instruments. "Future common expenses" shall mean common expenses for which assessments are not yet due and payable.

(3) Repealed.

(4) "Condominium" shall mean real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the portions designated for separate ownership. Real estate shall not be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

(5) "Condominium instruments" shall mean the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

(6) "Condominium unit" shall mean a unit together with the undivided interest in the common elements appertaining to that unit.

(7) "Contractable condominium" shall mean a condominium from which 1 or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of 1 or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

(8) "Conversion condominium" shall mean a condominium containing structures which before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

(9) "Convertible land" shall mean a building site; that is to say, a portion of the common elements, within which additional units or limited common elements, or both, may be created in accordance with the provisions of this chapter.

(10) "Convertible space" shall mean a portion of a structure within the condominium, which portion may be converted into 1 or more units or common elements, or both, in accordance with the provisions of this chapter.

(11) "Declarant" shall mean any person or group of persons acting in concert who:

- (A) Offers to dispose of the person's or group's interest in a condominium unit not previously disposed of;
- (B) Reserves or succeeds to any special declarant right; or
- (C) Applies for registration of the condominium.

(11A)(A) "Affiliate of a declarant" shall mean any person who controls, is controlled by, or shares common control with a declarant.

- (B) A person controls a declarant if the person:
  - (i) Is a general partner, officer, director, or employer of the declarant;
  - (ii) Directly or indirectly or acting in concert with at least 1 other person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies that represent more than 20% of the voting interest in the declarant;
  - (iii) Controls in any manner the election of a majority of the directors of the declarant; or
  - (iv) Has contributed more than 20% of the capital of the declarant.
- (C) A person is controlled by a declarant if the declarant:
  - (i) Is a general partner, officer, director, or employer of the person;
  - (ii) Directly or indirectly or acting in concert with another person, or through a subsidiary, owns, controls, holds with power to vote, or holds proxies representing more than 20% of the voting interest in the person; or
  - (iii) Controls in any manner the election of a majority of the directors if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(12) "Disposition" shall mean any voluntary transfer to a purchaser of a legal or equitable interest in a condominium unit, other than as security for a debt or pursuant to a deed in lieu of foreclosure.

(13) "Executive Board" shall mean an executive and administrative entity, by whatever name denominated and designated in the condominium instruments to act for the unit owners' association in governing the condominium.

(14) "Expandable condominium" shall mean a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

(15) "Identifying number" shall mean 1 or more letters or numbers, or both, that identify only 1 unit in the condominium.

(16) "Institutional lender" shall mean 1 or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including but not limited to, real estate investment trusts, any other entity regularly engaged directly or indirectly in financing the purchase, construction, or improvement of real estate, or any combination of any of the foregoing entities.

(17) Repealed.

(18) "Leasehold condominium" shall mean a condominium all or any portion of which is subject to a lease, the expiration or termination of which will terminate the condominium or exclude a portion therefrom.

(19) "Limited common element" shall mean a portion of the common elements reserved for the exclusive use of those entitled to the use of 1 or more, but less than all, of the units.

(19A) "Master association" shall mean an organization described in § 45-1858, whether or not the organization is an association described in § 45-1841.

(20) "Mayor" shall mean the Mayor of the District of Columbia.

(21) "Nonbinding reservation agreement" shall mean an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be cancelled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested to the declarant at any time prior to the execution of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

(22) "Offer" shall mean any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, other than as security for a debt; provided, however, that "offer" shall not mean any advertisement of a condominium not located in the District of Columbia in a newspaper or other periodical of general circulation, or in any public broadcast medium. Nothing shall be considered an offer that expressly states that the condominium has not been registered with the Mayor and that no unit in the condominium can or will be offered for sale until the time the unit has been so registered.

(23) "Officer" shall mean any member of the executive board or official of the unit owners' association.

(24) "Par value" shall mean a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association, liability for common expenses, or rights to common profits, assigned on the basis thereof.

(25) "Person" shall mean a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination of any of the foregoing.

(26) "Purchaser" shall mean any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer, acquires a legal or equitable interest in a condominium unit other than a leasehold interest, including a renewal option, of less than 20 years, or as security for an obligation.

(26A) "Real estate" or "land" shall mean any leasehold or other estate or interest in, over, or under land, including but not limited to, any structure, fixture, or any other improvement or interest which by custom, usage, or law passes with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term "real estate" or "land" shall be deemed to include a parcel with or without an upper or lower boundary, and space that may be filled with air or water. Any requirement in the Condominium Amendment Act of a legally sufficient description shall be deemed to include a requirement that any upper or lower boundary of a parcel be identified with reference to established data.

(27) "Registered land surveyor" shall mean any person or firm permitted to prepare and certify surveys and subdivision plats in the District of Columbia, including but not limited to, registered civil engineers.

(28) "Size" shall mean the number of cubic feet or the number of square feet of ground or floor space, or both, within each unit as computed by reference to the plats and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, or garage space, may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

(28A) "Special declarant right" shall mean any right reserved for the benefit of a declarant or any person that becomes a declarant to:

(A) Complete improvements indicated on plats and plans filed with the declaration pursuant to § 45-1824;

(B) Expand an expandable condominium pursuant to § 45-1829;

(C) Contract a contractable condominium pursuant to § 45-1830;

(D) Convert convertible land, convertible space, or both pursuant to § 45-1827 or § 45-1828;

(E) Elect, appoint, or remove any officer of the unit owners' association or master association or any executive board member pursuant to § 45-1842 during any period of declarant control;

(F) Exercise any power or responsibility otherwise assigned by any condominium instrument or by the Condominium Amendment Act to the unit owners' association, any officer of the unit owners' association, or the executive board;

(G) Use easements through the common elements to make improvements within the condominium or real estate that may be added to the condominium pursuant to § 45-1831;

(H) Make the condominium subject to a master association pursuant to § 45-1858;

(I) Make the condominium part of a larger condominium pursuant to § 45-1859; or

(J) Maintain a sales office, management office, or model unit pursuant to § 45-1832.

(29) "Surveyor" shall mean the Office of the Surveyor of the District of Columbia.

(29A) “Time share” shall mean a right to occupy a condominium unit or any of several condominium units during 5 or more separate time periods over a period of at least 5 years including renewal options, whether or not the right is coupled with an estate or interest in a condominium or a specified portion of an estate or interest in a condominium.

(30) “Unit” shall mean a portion of the condominium designed and intended for individual ownership. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with § 45-1828(d).

(31) “Unit owner” shall mean a declarant or any person who owns a condominium unit. In the case of a leasehold condominium, “unit owner” shall mean a declarant or person whose leasehold interest in the condominium extends for the entire balance of the unexpired term. The term “unit owner” shall not include a person who has an interest in a condominium unit solely as a security for a debt. (1973 Ed., § 5-1202; Mar. 29, 1977, D.C. Law 1-89, title I, § 102, 23 DCR 9532b; Sept. 22, 1978, D.C. Law 2-110, § 2, 25 DCR 1461; Mar. 8, 1991, D.C. Law 8-233, § 2(b), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(b), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(b), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1603, 45-1801, 45-1816, 47-802, and 47-1302.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 2-110.** — Law 2-110, the “Condominium Act of 1976 Amendment of 1978,” was introduced in Council and assigned Bill No. 2-200, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-231 and

transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 48-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**References in text.** — The “Condominium Amendment Act,” referred to in the third sentence of (26A), and in (28A)(F), is D.C. Law 8-233.

**Cited** in Dresser v. Sunderland Apts. Tenants Ass’n, App. D.C., 465 A.2d 835 (1983).

## § 45-1803. Ownership of individual units.

Each condominium unit shall constitute for all purposes a separate parcel of real estate, distinct from all other condominium units. Any condominium unit may be owned by more than 1 person as joint tenants, as tenants in common, as tenants by the entirety (in the case of husband and wife), or in any other real estate tenancy relationship recognized under the laws of the District of Columbia. (1973 Ed., § 5-1203; Mar. 29, 1977, D.C. Law 1-89, title I, § 103, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(c), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1836.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1804. Separate taxation.

If there is any unit owner other than the declarant, a tax or assessment shall not be levied on the condominium as a whole or against any common elements, but only on the individual condominium units. A condominium unit shall be

carried on the records of the District of Columbia and assessed as a separate and distinct taxable entity. (1973 Ed., § 5-1204; Mar. 29, 1977, D.C. Law 1-89, title I, § 104, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(d), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## **§ 45-1805. Ordinances and regulations.**

No zoning or other land use ordinance or regulation shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance or regulation which would permit a physically identical project or development under a different form of ownership. No subdivision ordinance or regulation shall apply to any condominium or to any subdivision of any convertible land, convertible space, or unit unless such ordinance or regulation is by its express terms made applicable thereto. Nothing in this section shall be construed to permit application of any provision of the building code which is not expressly applicable to condominiums by reason of the form of ownership inherent therein to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy. (1973 Ed., § 5-1205; Mar. 29, 1977, D.C. Law 1-89, title I, § 105, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## **§ 45-1806. Eminent domain; allocation of award; proportionate shares of common areas and redetermination thereof where units or parts of units taken; reallocation of voting rights, profits, and future liabilities; recordation of decree.**

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common elements, except that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than 1 unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be

reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned.

(b) If 1 or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree, reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for the unit owner's entire undivided interest in the common elements and for the unit owner's entire unit.

(e) Votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, respectively, with any units partially taken participating in such reallocation as though the voting strength in the unit owners' association, right to future surplus funds, and liabilities for future common expenses not

specially assessed, respectively, had been reduced in proportion to the reduction in their undivided interests in the common elements. But in any case where votes in the unit owners' association were originally assigned on the basis of equality (subject to the exception for convertible spaces) votes in the unit owners' association shall not be reallocated. The decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the District of Columbia. (1973 Ed., § 5-1206; Mar. 29, 1977, D.C. Law 1-89, title I, § 106, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(e), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1850.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## **§ 45-1807. Variation by agreement.**

Except as expressly provided by this chapter, a provision of this chapter may not be varied by agreement and any right conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade a limitation or prohibition of this chapter or the condominium instruments. (Mar. 29, 1977, D.C. Law 1-89, title I, § 107, as added Mar. 8, 1991, D.C. Law 8-233, § 2(f), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(c), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(c), 39 DCR 683.)

**Legislative history of Law 8-233.** — Law 8-233, the "Condominium Act of 1976 Reform Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-65, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by

the Mayor on December 27, 1990, it was assigned Act No. 8-316 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## **§ 45-1808. Interpretation of chapter.**

In the application or construction of the provisions of this chapter, the courts of the District of Columbia shall give due regard to judicial decisions and rulings in states that have enacted the Uniform Condominium Act or any other condominium statute that contains provisions similar to the provisions of this chapter. (Mar. 29, 1977, D.C. Law 1-89, title I, § 108, as added Mar. 8, 1991, D.C. Law 8-233, § 2(g), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(d), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(d), 39 DCR 683.)

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

*Subchapter II. Establishment of Condominiums.***§ 45-1811. Creation of condominiums; recordation of instruments; plats; contiguity of units.**

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections (a) and (b) of § 45-1824. The foreclosure of any mortgage, deed of trust or other lien shall not be deemed, ex proprio vigore, to terminate the condominium. (1973 Ed., § 5-1211; Mar. 29, 1977, D.C. Law 1-89, title II, § 201, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(h), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1870.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**§ 45-1812. Release of liens prior to conveyance of first unit; exemption; liens for labor or material applied to individual units or common areas; partial release.**

(a) At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 45-1842(a) has expired, and so long as the bylaws authorize the same.

(b) No labor performed or materials furnished with the consent of or at the request of a unit owner or such unit owner's agent or contractor or subcontractor shall be the basis for the filing of a lien pursuant to the provisions of § 38-101 against the property of any unit owner not expressly consenting to the same, except that such consent shall be deemed to be given by any unit owner in the case of emergency repairs to his unit. Labor performed or materials furnished for the common elements, if duly authorized by the unit owners' association or its executive board subsequent to any period of developer control pursuant to § 45-1842(a), shall be deemed to be performed or

furnished with the express consent of every unit owner and shall be the basis for the filing of a lien pursuant to the provisions of § 38-101 against all of the condominium units. Notice of such lien shall be served on the principal officer of the unit owners' association or any member of the executive board.

(c) In the event that any lien, other than a deed of trust or mortgage, becomes effective against 2 or more condominium units subsequent to the creation of the condominium, any unit owner may remove such unit owner's condominium unit from that lien by payment of the amount attributable to that condominium unit, or, in the case of any mechanic's or materialman's lien, by filing a written undertaking for such amount with surety approved by the court as provided in § 38-118. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to § 45-1852(c). Subsequent to such payment, discharge or other satisfaction, or filing of bond, the unit owner of that condominium unit shall be entitled to have that lien released as to such unit owner's condominium unit, and the unit owners' association shall not assess, or have a valid lien against that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 45-1852 and 45-1853. (1973 Ed., § 5-1212; Mar. 29, 1977, D.C. Law 1-89, title II, § 202, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(i), 38 DCR 261.)

**Legislative history of Law 1-89.** — See note to § 45-1801. **Legislative history of Law 8-233.** — See note to § 45-1807.

### **§ 45-1813. Description of condominium units; undivided interest in common elements automatically included.**

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of that unit, the name of the condominium and the instrument number and date of recordation of the declaration and the condominium book and page number where the plats and plans are recorded. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein. (1973 Ed., § 5-1213; Mar. 29, 1977, D.C. Law 1-89, title II, § 203, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1814. Declaration, bylaws and amendments of each to be executed by owners and lessees.**

The declaration and bylaws, and any amendments of either made pursuant to § 45-1829, shall be executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 45-1829 does not include, in their capacity as such, any

mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an inchoate dower or courtesy interest, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common elements. (1973 Ed., § 5-1214; Mar. 29, 1977, D.C. Law 1-89, title II, § 204, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(j), 38 DCR 261.)

**Legislative history of Law 1-89.** — See note to § 45-1801. **Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1815. Recordation of condominium instruments; amendment and certification thereof.

All amendments and certifications of the condominium instruments shall set forth the instrument number and date of recordation of the declaration and, when necessary, shall set forth the condominium book and page number where the plats and plans are recorded. All condominium instruments and all amendments and certifications thereof shall set forth the name and address of the condominium and shall be so recorded. The Recorder of Deeds shall accept for recordation any executed and acknowledged condominium instrument or any executed and acknowledged amendment and certification without further review of a condominium instrument or the imposition of any additional requirement. (1973 Ed., § 5-1215; Mar. 29, 1977, D.C. Law 1-89, title II, § 205, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(k), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1838 and 45-1870.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1816. Construction of terms in instruments; designation of unit boundaries; division of property within and without unit boundary; common element serving single unit.

Except to the extent otherwise provided by the condominium instruments:

(1) The terms defined in § 45-1802 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires;

(2) To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all doors and windows therein, and all lath, wallboard, plastering, and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors, or ceilings shall be deemed a part of the common elements;

(3) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit

shall be deemed a part of that unit, while any portions thereof serving more than 1 unit or any portion of the common elements shall be deemed a part of the common elements;

(4) Subject to the provisions of paragraph (3) of this section, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit; and

(5) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively. (1973 Ed., § 5-1216; Mar. 29, 1977, D.C. Law 1-89, title II, § 206, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1801, 45-1820, 45-1824, and 45-1846.

**Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1817. Instruments construed together and incorporate one another; when conflict arises.**

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. If any conflict exists among the condominium instruments, the declaration controls, except that a construction consistent with this chapter controls in all cases over any inconsistent construction. (1973 Ed., § 5-1217; Mar. 29, 1977, D.C. Law 1-89, title II, § 207, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1818. Provisions of instrument severable; unlawful provisions void; rule against perpetuities; restraints on alienation; unreasonable restraint.**

(a) All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

(b) No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

(c) No restraint on alienation shall discriminate or be used to discriminate on the basis of religious conviction, race, color, sex, or national origin. The condominium instruments may provide, however, for restraints on use of some or all of the units restricting the use of such units to persons meeting requirements based upon age, sex, marital status, physical disability or, in connection with programs of the federal or District of Columbia government, income levels.

(d) Subject to the provisions of subsection (c) of this section, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium

instruments restraining the alienation of condominium units not restricted exclusively to residential use.

(e) Title to a condominium unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the condominium instruments to comply with this chapter. Whether or not a substantial failure impairs marketability is not affected by this chapter. (1973 Ed., § 5-1218; Mar. 29, 1977, D.C. Law 1-89, title II, § 208, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(l), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1819. Compliance with condominium chapter and instruments.

Any lack of compliance with this chapter or with any lawful provision of the condominium instruments shall be grounds for an action or suit to recover damages or injunctive relief, or for any other available remedy maintainable by the unit owners' association, the unit owners' association's executive board, any managing agent on behalf of the unit owners' association, an aggrieved person on his or her own behalf, or, in an otherwise proper case, as a class action. (1973 Ed., § 5-1219; Mar. 29, 1977, D.C. Law 1-89, title II, § 209, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(m), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1853.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Cited** in Dresser v. Sunderland Apts. Tenants Ass'n, App. D.C., 465 A.2d 835 (1983); Lonon v. Board of Dirs., App. D.C., 535 A.2d 1386 (1988); Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, App. D.C., 548 A.2d 87 (1988).

## § 45-1820. Contents of declaration; where condominium contains convertible land; expandable, contractable and leasehold condominiums; easements; additionally required descriptions.

(a) The declaration for every condominium shall contain:

(1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium";

(2) A legally sufficient description of the land submitted to this chapter;

(3) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(4) A description or delineation of any limited common elements not covered by § 45-1816(5), showing or designating the unit or units to which each is assigned;

(5) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as

limited common elements, together with a statement that they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § 45-1823. The description of the method whereby an assignment shall be made shall include the following information:

- (A) The name of any person who may assign the limited common elements;
- (B) The name of any person who must execute the assignment;
- (C) Whether or not the deed to a condominium unit will reflect the assignment, if previously made; and
- (D) If there is any limited common expense payable by the unit owners of a condominium unit to which the limited common elements pertain;
- (6) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 45-1821; and
- (7) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land the declaration shall also contain:

- (1) A legally sufficient description of each convertible land within the condominium;
- (2) A statement of the maximum number of units that may be created within each such convertible land;
- (3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use;

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used and architectural style;

(5) A description of all other improvements that may be made in each convertible land within the condominium;

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein; and

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824 may be used to supplement information furnished pursuant to paragraphs (1), (4), (5), (6), and (7) of this subsection, and that paragraph (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium the declaration shall also contain:

- (1) The explicit reservation of an option to expand the condominium;
- (2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;
- (3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;
- (4) A legally sufficient description of all land that may be added to the condominium, henceforth referred to as "additional land";
- (5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations;
- (6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions regulating the order in which they may be added to the condominium;
- (7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard;
- (8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with paragraph (6) of this subsection, the declaration shall also state the maximum number of units that may be created on each portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with paragraph (6) of this subsection, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium;
- (9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use;
- (10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards;
- (11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard;
- (12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on

the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard; and

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards; provided, that the plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824 may be used to supplement information furnished pursuant to paragraphs (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that paragraph (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(d) If the condominium is a contractable condominium the declaration shall also contain:

(1) The explicit reservation of an option to contract the condominium;

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations;

(3) A time limit, not exceeding 5 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified;

(4) A legally sufficient description of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land";

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legally sufficient descriptions clearly delineating such portions and regulating the order in which such portions may be withdrawn from the condominium; and

(6) A legally sufficient description of all of the submitted land to which the option to contract the condominium does not extend; provided, that the plats recorded pursuant to § 45-1824(a) may be used to supplement information furnished pursuant to paragraphs (4), (5) and (6) of this subsection, and that paragraph (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 45-1837.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth:

(1) The instrument number and date of recordation of each such lease;

(2) The date upon which each such lease is due to expire and the rights, if any, to renew such lease and the conditions pertaining to any such renewal;

(3) A statement as to whether any land or improvements, or both, will be owned by the unit owners in fee simple, and if so, either:

(A) A description of the same, including without limitation a legally sufficient description of any such land; or

(B) A statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and

(4) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights; provided, that after the recording of the declaration, no lessor who executed the same, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain:

(1) A description of the permitted use or uses;

(2) If less than all of those entitled to the use of all the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization; and

(3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legally sufficient description of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estates therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats. (1973 Ed., § 5-1220; Mar. 29, 1977, D.C. Law 1-89, title II, § 210, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(n), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1822, 45-1823, 45-1825, 45-1829, 45-1830 and 45-1842.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**§ 45-1821. Allocation of interests in common elements; proportionate or equal shares; statement in declaration; no alteration nor disposition without unit; no partition.**

(a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 45-1824 an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) of this section shall add up to 1 if stated as fractions or 100% if stated as percentages.

(d) If, in accordance with subsection (a) or (b) of this section, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) of this section shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing 3 columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated. (1973 Ed., § 5-1221; Mar. 29, 1977, D.C. Law 1-89, title II, § 211, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1820.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Cited in Ochs v. L'Enfant Trust, App. D.C., 504 A.2d 1110 (1986).**

**§ 45-1822. Allocation where condominium expandable or contains convertible land; reallocation following addition of land; where all convertible space converted to common elements; effect of reduction in number of units.**

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824; or

(2) Prohibits the creation of any units not described pursuant to § 45-1820(b)(6) (in the case of convertible lands) or § 45-1820(c)(12) (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) No allocation of interests in the common elements to any units created within any convertible land or within any additional land shall be effective until plats and plans depicting such units are recorded pursuant to § 45-1824(c). The declarant shall reallocate the undivided interests in the common elements so that the units within the convertible land or additional land shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824. Promptly upon recording the amendment to the declaration, the declarant shall record an amendment to the plats and plans depicting the units created within the convertible land or additional land.

(c) If all of a convertible space is converted into common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby. (1973 Ed., § 5-1222; Mar. 29, 1977, D.C. Law 1-89, title II, § 212, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1825, 45-1827, 45-1829, and 45-1841.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1823. Assignments of limited common elements; method of reassignment; amendment of instruments and recordation thereof.**

(a) All assignments and reassessments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium instrument expressly provided otherwise prior to the first assignment of that limited common element.

(b) Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned upon written application of the condominium unit owners concerned to the principal officer of the unit owners' association or to any officer the condominium instruments may specify. The officer to whom the application is made shall prepare and execute an amendment to the condominium instruments that reassigns any right or obligation with respect to the limited common element involved. The amendment shall be executed by the unit owners of the condominium units concerned and shall be recorded by the unit owners' association upon payment by the unit owners of reasonable costs for preparation and acknowledgment of the amendment.

(c) A common element not previously assigned as a limited common element shall be assigned only pursuant to § 45-1820(a)(5). The assignment shall be made as follows:

(1) If the assignment is made by the declarant, the amendment to the declaration that makes an assignment shall be prepared, executed, and recorded by the declarant and a copy sent to the unit owners' association. Unless the declaration provides otherwise, the amendment shall be executed by the condominium unit owner of the unit concerned. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 45-1820(a)(5).

(2) If the assignment is made by the unit owners' association, the amendment to the declaration that makes an assignment shall be prepared and executed by the principal officer of the unit owners' association or any other officer the condominium instruments may specify. An amendment shall be executed by the condominium unit owner of the unit concerned, and upon payment by the unit owner for the reasonable costs for the preparation and acknowledgment of the amendment, the amendment shall be recorded by the unit owners' association. The recordation of an amendment shall be conclusive evidence of compliance with the method prescribed by § 45-1820(a)(5).

(3) Any assignment made prior to March 8, 1991, shall be considered valid if the assignment would be permitted pursuant to this section. (1973 Ed.,

§ 5-1223; Mar. 29, 1977, D.C. Law 1-89, title II, § 213, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(o), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(e), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(e), 39 DCR 683.)

**Section references.** — This section is referred to in § 45-1820.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## § 45-1824. Recordation of plat and plans; contents; certification; when new plat, survey, and recordation necessary; provisions applicable to limited common elements; filing with Office of Surveyor.

(a) There shall be recorded promptly upon recordation of the declaration, 1 or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there be more than 1 such land the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land with 1 or more letters or numbers, or both, different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than 1 withdrawable land, or more than 1 leased land, the plats shall label each such land with 1 or more letters or numbers, or both, different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements

located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "not yet begun," and which, if any, have been begun but have not been substantially completed by the use of the phrase "not yet completed." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection (b) of this section are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified as to its accuracy and compliance with the provisions of this subsection by a registered land surveyor, and the said surveyor shall certify that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

(b) There shall also be recorded, promptly upon recordation of the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting 1 or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit lying outside of such structures, subject to the following exception: in the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer, and the said architect or engineer shall certify that all units or portions thereof depicted thereon have been substantially completed.

(c) When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record new plats of survey conforming to the requirements of subsection (a) of this section. In any case where less than all of a convertible land is being converted, such plats shall show the location and dimensions of the remaining portion or portions of such land in addition to otherwise conforming with the requirements of subsection (a) of this section. At the same time, the declarant shall

record, with regard to any structures on the land being converted, or added, either plans conforming to the requirements of subsection (b) of this section, or certifications, conforming to the certification requirements of said subsection, of plans previously recorded pursuant to § 45-1825.

(d) When converting all or any portion of any convertible space into 1 or more units or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a registered architect or registered engineer.

(e) For the purposes of subsections (a), (b), and (c) of this section, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of § 45-1816(5) make such designations unnecessary.

(f) The Office of the Surveyor shall receive plats and plans filed pursuant to this chapter. Unless such plats and plans are filed pursuant to § 45-1825, the Office of the Surveyor shall ascertain whether such plats and plans contain the certification required by subsections (a) and (b) of this section. If plats and plans are filed pursuant to § 45-1825 or if plats and plans are filed with the required certification, the Office of the Surveyor shall record such plats and plans without further certification or review. If plats and plans filed pursuant to § 45-1825 are thereafter certified as required by this section, the Office of the Surveyor shall record such certification with such plats and plans without further certification or review. (1973 Ed., § 5-1224; Mar. 29, 1977, D.C. Law 1-89, title II, § 214, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1811, 45-1820, 45-1821, 45-1822, 45-1825, 45-1827, 45-1828, 45-1829, 45-1841, 45-1845, and 45-1863.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1825. Preliminary recordation of plans.

Plans previously recorded pursuant to the provisos set forth in subsections (b) and (c) of § 45-1820 may be used in lieu of new plans to satisfy in whole or in part the requirements of §§ 45-1822(b), 45-1827(b) and 45-1829 if certifications thereof are recorded by the declarant in accordance with § 45-1824(b); and if such certifications are so recorded, the plans which they certify shall be deemed recorded pursuant to § 45-1824(c) within the meaning of the 3 sections aforesaid. (1973 Ed., § 5-1225; Mar. 29, 1977, D.C. Law 1-89, title II, § 215, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1824.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1826. Easement for encroachments and support; where liability not relieved.**

(a) To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, such easement shall not relieve unit owners of liability in cases of wilful and intentional misconduct by them or their agents or employees, nor shall the declarant or any contractor, subcontractor, or materialman be relieved of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

(b) Each unit and common element shall have an easement for support from every other unit and common element. (1973 Ed., § 5-1226; Mar. 29, 1977, D.C. Law 1-89, title II, § 216, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1827. Conversion of convertible lands; recordation of appropriate instruments; character of convertible land; tax liability; time limitation on conversion.**

(a) The declarant may convert all or any portion of any convertible land into 1 or more units or common elements, or both, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 45-1824(c).

(b) The declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with § 45-1822(b). Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(c) All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, real estate taxes shall be assessed against the declarant rather than the unit owners as to both the convertible land and any improvements thereon. No such conversion shall occur after 5 years from the recordation of the declaration, or such shorter period of time as the declaration may specify. (1973 Ed., § 5-1227; Mar. 29, 1977, D.C. Law 1-89, title II, § 217, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1825, and 45-1829.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1828. Conversion of convertible spaces; amendment of declaration and bylaws; recordation; status of convertible space not converted.

(a) The declarant may convert all or any portion of any convertible space into 1 or more units or common elements, or both, including without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) of this section and § 45-1824(d).

(b) Simultaneously with the recording of plats and plans pursuant to § 45-1824(d), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into 1 or more units in accordance with this section, the declarant shall prepare, execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with § 45-1836(d).

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit. (1973 Ed., § 5-1228; Mar. 29, 1977, D.C. Law 1-89, title II, § 218, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802 and 45-1836.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1829. Expansion of condominiums; amendment of declaration; recordation; reallocation of interests in common elements.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to § 45-1824(c) and the recordation of an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment

shall contain a legally sufficient description of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of § 45-1822(b). Such amendment may create convertible or withdrawable lands within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to §§ 45-1820(d)(3) and 45-1827(c). (1973 Ed., § 5-1229; Mar. 29, 1977, D.C. Law 1-89, title II, § 219, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1814, and 45-1825. **Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1830. Contraction of condominiums; amendment of declaration; recordation; withdrawal of land after conveyance of unit.**

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legally sufficient description of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to § 45-1820(d)(5), then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon. (1973 Ed., § 5-1230; Mar. 29, 1977, D.C. Law 1-89, title II, § 220, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1802. **Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1831. Declarant's easement over common elements for purpose of improvements, etc.**

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith. (1973 Ed., § 5-1231; Mar. 29, 1977, D.C. Law 1-89, title II, § 221, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1833, and 45-1849. **Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1832. Sales offices, model units, etc.; authorization; when become common elements.**

The declarant and the declarant's authorized agents, representatives, and employees may maintain sales offices, management offices, and model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size,

location, and relocation thereof. Any such sales office, management office, or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office, management office, or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal. (1973 Ed., § 5-1232; Mar. 29, 1977, D.C. Law 1-89, title II, § 222, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1833, 45-1839.1, and 45-1849.

**Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1833. Representations or commitments relating to additional or withdrawable land; declarant's obligation to complete or begin improvements designated for such; liability for damages arising out of use of certain easements.**

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. In the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments, or in any other agreement that requires the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done with regard to the condominium or any portion of the condominium, this subsection shall not be construed to nullify, limit, or otherwise affect that obligation.

(b) The declarant shall complete all improvements labeled "not yet completed" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "not yet begun" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(c) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ 45-1831 and 45-1832, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium. (1973 Ed., § 5-1233; Mar. 29, 1977, D.C. Law 1-89, title II, § 223, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(p), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(f), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(f), 39 DCR 683.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**§ 45-1834. Improvements or alterations within unit; exterior appearance not to be changed; merger of adjoining units.**

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, if a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 45-1835. (1973 Ed., § 5-1234; Mar. 29, 1977, D.C. Law 1-89, title II, § 224, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1835. Relocation of boundaries between units; when permitted; written application; amendment of declaration and bylaws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.**

(a)(1) If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

(b) If the unit owners of adjoining units whose mutual boundaries may be relocated, desire to relocate such boundaries, then the principal officer of the

unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute the appropriate instruments pursuant to subsections (c), (d) and (e) of this section.

(c) An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain words of conveyance between those unit owners. If the unit owners of the units involved have specified in their written application, a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

(d) If the unit owners of the units involved have specified in their written application reasonable allocations as between the units involved of the aggregate number of votes in the unit owners' association, rights to future surplus funds, or liabilities for future common expenses not specially assessed, then an amendment to the bylaws shall reflect any such reallocations.

(e) Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

- (1) By a registered land surveyor in the case of any plat; and
- (2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections have been prepared, executed, and acknowledged, the instruments shall be executed and acknowledged by the unit owners of the units concerned and, upon payment by the unit owners of reasonable costs for the preparation and acknowledgment of the instruments, the instruments shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the relocation of boundaries effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocation made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Any relocation of boundaries between adjoining units shall be governed by this section and not by § 45-1836. Section 45-1836 shall apply only to such subdivisions of units as are intended to result in the creation of 2 or more units in place of the subdivided unit. (1973 Ed., § 5-1235; Mar. 29, 1977, D.C. Law 1-89, title II, § 225, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(q), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1834.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**§ 45-1836. Subdivision of units; when permitted; written application; amendment of declaration and by-laws; reallocation of common elements; altered maps and plans; recordation and effect thereof; scope of provisions.**

(a)(1) If the condominium instruments expressly permit the subdivision of any units; then such units may be subdivided in accordance with:

(A) The provisions of this section; and

(B) Any restrictions and limitations not otherwise unlawful which the condominium instruments may specify.

(2) No unit shall be subdivided unless the condominium instruments expressly permit it.

(b) If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections (c), (d), and (e) of this section.

(c) An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common elements assigned to the subdivided unit exclusively should be assigned to 1 or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

(d) An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses and rights to common profits formerly appertaining to the subdivided unit.

(e) Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection:

(1) By a registered land surveyor in the case of any plat; and

(2) By a registered architect or registered engineer in the case of any plan.

(f) If appropriate instruments in accordance with the preceding subsections of this section have been prepared, executed, and acknowledged, the instru-

ments shall be executed by the subdivider and, upon payment by the subdivider of reasonable costs for the preparation and acknowledgment of the instrument, shall be recorded by the unit owners' association. The instruments shall become effective upon recordation and the recordation shall be conclusive evidence that the subdivision effectuated is not a violation of any restriction or limitation specified by the condominium instruments and that any reallocations made pursuant to subsections (c) and (d) of this section are reasonable.

(g) Notwithstanding the provisions of §§ 45-1803 and 45-1828(d), this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section. (1973 Ed., § 5-1236; Mar. 29, 1977, D.C. Law 1-89, title II, § 226, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(r), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1828 and 45-1835.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1837. Amendment of instruments.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon recordation if the amendment has been executed by the declarant. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred by this section.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which  $\frac{2}{3}$  of the votes in the unit owners' association pertain, or any larger majority that the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than 1 year after the amendment is recorded.

(d) Any amendment to the condominium instruments required by this chapter to be recorded by the unit owners' association shall be prepared, executed, recorded, and certified on behalf of the unit owners' association by any officer designated for that purpose or, in the absence of designation, by the presiding officer of the executive board.

(e) Except to the extent expressly permitted or required by other provisions of this chapter, an amendment to the condominium instruments may not:

- (1) Create or increase special declarant rights;
- (2) Increase the number of units;

(3) Change the boundaries of any unit;

(4) Change the undivided interest in the common elements, the liability for common expenses, the right to surplus funds, or the number of votes in the unit owners' association that pertains to any unit; or

(5) Change the uses to which any unit is restricted, in the absence of the unanimous consent of the unit owners.

(f)(1) Notwithstanding any other provision of this section, within 5 years after the recordation of a condominium instrument that contains or creates a mistake, inconsistency, error, or ambiguity, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to:

(A) Correct a mathematical mistake, an inconsistency, or a scrivener's error; or

(B) Clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or right to surplus funds, or the number of votes in the unit owners' association that pertain to a unit.

(2) An amendment or supplement may not materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. The principal officer of the unit owners' association may unilaterally execute and record a corrective amendment or supplement upon a vote of  $\frac{2}{3}$  of the members of the executive board. Any corrective amendment or supplement shall be validated to the extent that the corrective amendment or supplement would have been permitted by this subsection. (1973 Ed., § 5-1237; Mar. 29, 1977, D.C. Law 1-89, title II, § 227, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(s), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(g), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(g), 39 DCR 683.)

**Section references.** — This section is referred to in § 45-1820.

**Emergency act amendments.** — For temporary amendment of section, see § 2(g) of the Condominium Act of 1976 Technical and Clarifying Emergency Amendment Act of 1991 (D.C. Act 9-47, June 24, 1991, 38 DCR 4082).

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## § 45-1838. Termination of condominium.

(a) If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. A termination shall become effective upon recordation if the termination has been executed by the declarant and recorded in the Office of the Surveyor. This section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right conferred.

(b) If any of the units in the condominium are restricted exclusively to residential use and there is any unit owner other than the declarant, the

condominium may be terminated by the agreement of unit owners of units to which  $\frac{4}{5}$  of the votes in the unit owners' association pertain, or any larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

(c) An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement or ratification in the same manner as a deed by the requisite number of unit owners. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association pertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. A termination agreement and any ratification of the termination agreement shall be effective only upon recordation in the Office of the Surveyor.

(d) In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium shall be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(e) In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale.

(f) On behalf of the unit owners, the unit owners' association may contract for the disposition of real estate in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections (b) and (c) of this section. If any real estate in the condominium shall be sold following termination, title to the real estate, upon termination, shall vest in the unit owners' association as trustee for the holders of all interests in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (i) of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the real estate, each unit owner or his or her successor in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of occupancy by the unit owner or his or her successor in interest, each unit owner or his successor in

interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

(g) If the real estate that constitutes the condominium shall not be sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the real estate in the condominium shall vest in the unit owners upon termination as tenants in common in proportion to the unit owners' respective interests as provided in subsection (i) of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his or her successors in interest shall have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

(h) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lienholders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lienholder. Any other creditor of the unit owners' association shall be treated as if he or she had perfected a lien on the units immediately before termination.

(i) The respective interests of unit owners referred to in subsections (f), (g), and (h) of this section shall be as follows:

(1) Except as provided in paragraph (2) of this subsection, the respective interests of a unit owner shall be the fair market values of the unit owner's limited common elements, and common element interests immediately before the termination, as determined by an independent appraiser selected by the unit owners' association. The decision of the independent appraiser shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which  $\frac{1}{4}$  of the votes in the unit owners' association. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

(j) Except as provided in subsection (k) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw the portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

(k) If a lien or encumbrance against a portion of the real estate that comprises the condominium has priority over the condominium instruments, and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the real estate subject to the lien or encumbrance from the condominium. (1973 Ed., § 5-1238; Mar. 29, 1977, D.C. Law 1-89, title II, § 228, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(t), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38 § 2(h), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(h), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1814 and 45-1850.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**Cited** in Ochs v. L'Enfant Trust, App. D.C., 504 A.2d 1110 (1986).

## **§ 45-1839. Condominium lease; recordation; terms; leasehold payments; increases; sale or assignation; offer to unit owners' association; renewal.**

(a) The declarant of a leasehold condominium shall record with the condominium instruments any lease pursuant to which the condominium is a leasehold condominium ("condominium lease"); provided, however, it shall be sufficient for the declarant to record a statement of the book, page and date of recordation of such lease if such lease has previously been recorded among the land records of the District of Columbia. Condominium instruments establishing a leasehold condominium containing more than 3 residential units shall not be effective unless the condominium lease(s) comply with the requirements of subsections (b), (c) and (d) of this section.

(b)(1) If a condominium is a leasehold condominium subject to the provisions of this section, any condominium lease shall be for a term of not less than 99 years with a right of renewal for consecutive additional terms of not less than 99 years. The lease shall provide for level, periodic payments which may not be increased during the first 10 years of the leasehold term. If provided in the lease, the lessor may petition the Mayor for an increase in leasehold payments to be effective beginning with the 11th year of the leasehold term, and the Mayor shall approve such increase if he finds that:

(A) Costs borne by the lessor in connection with the lease have increased; or

(B) Costs of living, as measured by a standard statistical index computed and published by the United States government and available for the period of the leasehold term, have increased; and

(C) The increase in the lease payments is in reasonable proportion to such increased costs.

(2) An increase in lease payments shall be effective for a minimum period of 10 years, after which the lessor may again petition for an increase subject to the provisions of this subsection. The lessor shall not require or accept lease payments which do not meet the requirements of this subsection.

(c) A lessor of a condominium lease may sell or assign the lease only after offering the unit owners' association of the condominium the right to purchase the leasehold estate at a price and on terms offered to any other prospective purchaser. The lessor shall give the unit owners' association a period of at least 60 days within which to accept or reject the offer.

(d) The lessor of a condominium lease shall give the lessee of such lease a statement not less than 5 years prior to the expiration of such lease of whether the lease is to be renewed and on what terms the lease is to be renewed. If the lessor offers to renew the lease, the lessor shall give the lessee a period of at least 180 days within which to accept or reject the offer. (1973 Ed., § 5-1239; Mar. 29, 1977, D.C. Law 1-89, title II, § 229, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

### **§ 45-1839.1. Transfer of special declarant rights.**

(a) A special declarant right created or reserved under this chapter may not be transferred except by an instrument that evidences the transfer recorded in the same manner as the condominium instruments. The instrument shall not be effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

(1) A transferor shall not be relieved of any obligation or liability that arises before the transfer and shall remain liable for any warranty obligation imposed upon him or her by this chapter. Lack of privity shall not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to a special declarant right is an affiliate of a declarant, the transferor shall be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

(3) If a transferor retains a special declarant right, and transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall be liable for any obligation or liability imposed on a declarant by this chapter or by the condominium instruments that relates to the retained special declarant rights and that arises after the transfer.

(4) A transferor shall have no liability for any act or omission or any breach of a contractual or warranty obligation that arises from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure, mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of any unit owned by a declarant or real estate in a condominium subject to development rights, a person who acquires title to all the real estate being foreclosed or sold, upon his or her request, shall succeed to all special declarant rights related to the real estate held by the declarant, or to any rights reserved in the condominium instruments pursuant to § 45-1832 and held by the declarant to

maintain models, sales offices, and signs. The judgment or instrument that conveys title shall provide for transfer of only the special declarant rights requested. For purposes of this subsection, the term "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy or receivership proceedings of all units and other real estate in a condominium owned by a declarant:

(1) The declarant shall cease to have any special declarant rights; and

(2) The period of declarant control shall terminate unless the judgment or instrument that conveys title provides for transfer of all special declarant rights held by the declarant to a successor declarant.

(e) The liability or obligation of a person who succeeds to special declarant rights shall be as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant shall be subject to any obligation or liability imposed on the transferor by this chapter or the condominium instruments.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) of this subsection, who is not an affiliate of a declarant, shall be subject to any obligation or liability imposed by this chapter or the condominium instruments:

(A) On a declarant that relates to his or her exercise or nonexercise of special declarant rights; or

(B) On his or her transferor, other than:

(i) A misrepresentation by a previous declarant;

(ii) A warranty obligation on improvements made by a previous declarant or made before the condominium was created;

(iii) A breach of a fiduciary obligation by a previous declarant or his or her appointee to the executive board; or

(iv) Any liability or obligation imposed on the transferor's acts or omissions after the transfer.

(3) A successor who is not an affiliate of a declarant and whose sole right is a reservation in the condominium instruments to maintain models, sales offices, and signs may not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except a liability or obligation that arises under subchapter IV of this chapter that relates to disposition by the successor.

(4) If the transferor is not an affiliate of the successor to special declarant rights and the successor succeeded to all the special declarant rights pursuant to a deed in lieu of foreclosure or a judgment or instrument that conveys title to units under subsection (c) of this section, the successor may declare his or her intention in a recorded instrument to hold the rights solely for transfer to another person. Until the successor transfers all special declarant rights to any person who acquires title to any unit owned by the successor, or until the successor records an instrument that permits exercise of all special declarant rights, the successor may not exercise the special declarant rights other than

a right held by his or her transferor to control the executive board in accordance with the provisions of § 45-1842 for the duration of any period of declarant control. Any attempted exercise of special declarant rights other than a right held by the successor's transferor to control the executive board shall be void. For the period that a successor declarant may not exercise special declarant rights under this subsection, he or she shall not be subject to any liability or obligation as a declarant other than liability or obligation as a declarant for his or her acts or omissions under § 45-1842.

(f) Nothing in this section shall subject any successor to a special declarant right to any claim against or other obligation of a transferor declarant, other than a claim or obligation that arises under this chapter or the condominium instruments. (Mar. 29, 1977, D.C. Law 1-89, title II, § 230, as added Mar. 8, 1991, D.C. Law 8-233, § 2(u), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(i), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(i), 39 DCR 683.)

**Section references.** — This section is referred to in § 45-1801.

**Effect of amendments.** — D.C. Law 8-233 added this section.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

### *Subchapter III. Control and Governance of Condominiums.*

## **§ 45-1841. Bylaws; recordation; unit owners' association and executive board thereof; powers and duties; officers; amendment and contents thereof; responsibility for insurance on common elements.**

(a) There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

(b) The bylaws shall provide whether or not the unit owners' association shall have an executive board. The executive board, if any, shall, subsequent to the expiration of the period of declarant control specified pursuant to § 45-1842(a), be elected by the unit owners unless the unit owners vote to amend the bylaws to provide otherwise. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. The bylaws may delegate to such board, *inter alia*, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

(c) The bylaws shall provide whether or not there shall be officers in addition to the members of the executive board. If there are to be such additional officers, the bylaws shall specify the powers and responsibilities of the same, the manner of their selection and removal, their number and their terms. The bylaws may delegate to such additional officers, *inter alia*, any of the

powers and responsibilities assigned by this chapter to the unit owners' association.

(d) In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § 45-1822, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate to the new units votes in the unit owners' association, rights to future surplus funds, and liabilities for future common expenses not specially assessed, on the same bases as were used for such allocations to the units depicted on plats and plans recorded pursuant to subsections (a) and (b) of § 45-1824; or shall abolish the votes appertaining to former units and reallocate their rights to future surplus funds, and their liabilities for future common expenses not specially assessed, to the remaining units in proportion to the relative rights and liabilities of the remaining units immediately prior to the amendment.

(e) Repealed. (1973 Ed., § 5-1241; Mar. 29, 1977, D.C. Law 1-89, title III, § 301, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(v), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1802 and 45-1858.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Condominium property is not protected by implied warranty of habitability.** Green v. Condominium Mgt., Inc., 114 WLR 157 (Super. Ct. 1986).

**Cited in Johnson v. Hobson, App. D.C., 505 A.2d 1313 (1986).**

## **§ 45-1842. Control by declarant; limitations; contracts entered on behalf of unit owners; declarant to act where owners' association or officers thereof not existent; graduated representation of unit owners in executive board; strict construction.**

(a) The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or members of its executive board, or both, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant and no such authorization shall be valid after the time set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Mayor according to § 45-1866. The time limit initially set by the condominium instruments shall not exceed 3 years in the case of an expandable condominium or a condominium containing convertible land, or 2 years in the case of any other condominium containing any convertible land, or 2 years in the case of any other

condominium. Such period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

(b)(1) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, no contract or lease entered into with the declarant or an affiliate of a declarant, other than a lease subject to § 45-1820(e), management contract, employment contract, or lease of a recreational or parking area or facility, which is directly or indirectly made by or on behalf of the unit owners' association or the unit owners as a group, shall be entered into for a period in excess of 2 years. Any contract or agreement entered into after March 8, 1991, may be terminated without penalty by the unit owners' association or the executive board of the unit owners' association upon not less than 90 days written notice to the other party.

(2) If entered into at any time prior to the expiration of the period of declarant control contemplated by subsection (a) of this section, any contract, lease or agreement, other than those subject to the provisions of paragraph (1) of this subsection, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

(c) If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this subchapter or the condominium instruments require or permit action by the unit owners' association, its executive board, or any officer or officers.

(d) Notwithstanding subsection (a) of this section, the bylaws shall provide that:

(1) Not later than the time that units to which 25% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 25% of the members of the executive board shall be selected by unit owners other than declarant; and

(2) Not later than the time units to which 50% of the undivided interests in the common elements appertain have been conveyed, the unit owners' association shall cause a special meeting to be held at which not less than 33½% of the members of the executive board shall be selected by unit owners other than declarant.

(e) Repealed.

(f) This section shall be strictly construed to protect the rights of the unit owners. (1973 Ed., § 5-1242; Mar. 29, 1977, D.C. Law 1-89, title III, § 302, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(w), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1802, 45-1812, 45-1839.1, 45-1841, 45-1849, 45-1858, and 45-1867.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1843. Meetings.

Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit owners' association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place, and purpose of the meeting. The notice shall be sent by the United States mail to all unit owners of record at the address of their respective units and to any other address that the unit owners have designated to the officer. In the alternative, notice may be hand-delivered by the officer, if the officer certifies in writing that the notice was delivered to the unit owner. (1973 Ed., § 5-1243; Mar. 29, 1977, D.C. Law 1-89, title III, § 303, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(x), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1850 and 45-1858.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1844. Same — Executive board; quorums.

(a) Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than the 33½% of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 25%.

(b) Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one half of the votes in that body are present at the beginning of such meeting. (1973 Ed., § 5-1244; Mar. 29, 1977, D.C. Law 1-89, title III, § 304, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(y), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1845 and 45-1858.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1845. Allocation of votes within unit owners' association; vote where more than 1 owner of unit; proxies; majority; provisions not applicable to units owned by association.

(a) The bylaws may allocate to each unit depicted on plats and plans that comply with subsections (a) and (b) of § 45-1824 a number of votes in the unit owners' association proportionate to the liability for common expenses as established pursuant to § 45-1852(c).

(b) Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each

convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

(c) Since a unit owner may be more than 1 person, if only 1 of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than 1 of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any 1 of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

(d) Notwithstanding any contrary provisions of the condominium instruments, this subsection establishes the requirements for the validity of proxies. The votes that pertain to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in a case where the unit owner is more than 1 person, by or on behalf of all those persons. A proxy may be revoked if a unit owner or 1 of the unit owners, in the case of a unit owned by more than 1 person, gives actual notice of revocation to the person who presides over the meeting. A proxy shall be void if the proxy is not dated, if the proxy purports to be revocable without notice, or if the signatures of any person executing the proxy has not been witnessed by a person who shall sign his or her full name and address. A proxy shall terminate automatically upon the final adjournment of the first meeting held on or after the date of the proxy, but shall remain in effect during any recess or temporary adjournment of the meeting.

(e) If 50% or more of the votes in the unit owners' association appertain to 25% or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

(f) Notwithstanding anything in this section to the contrary, during any time that the unit owners' association is the owner of any condominium unit, the votes in the unit owners' association that pertain to the condominium unit shall be included in any calculation to determine the existence of a quorum at any meeting of the unit owners' association pursuant to § 45-1844, but otherwise shall be deemed to be cast in proportion to the affirmative and negative votes cast by all unit owners other than the unit owners' association at any meeting. (1973 Ed., § 5-1245; Mar. 29, 1977, D.C. Law 1-89, title III, § 305, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(z), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(j), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1858.

**Effect of amendments.** — D.C. Law 9-82 inserted the present first sentence of (d).

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**Cited** in Ochs v. L'Enfant Trust, App. D.C., 504 A.2d 1110 (1986).

## § 45-1846. Officers; disqualification.

(a) If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee or for a term or terms of 6 months or more shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

(b) If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of § 45-1816(1), the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person, which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection (a) of this section were it a natural person holding such office. (1973 Ed., § 5-1246; Mar. 29, 1977, D.C. Law 1-89, title III, § 306, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1847. Maintenance, repair, etc., of condominiums; right of access for repair; liability for damages arising from exercise thereof; warranty against structural defects; limitations upon actions; bond or other security.

(a) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong: (1) to the unit owners' association in the case of the common elements; and (2) to the individual unit owner in the case of any unit or any part thereof. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through such unit owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken,

the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may repair or replace specified unit components using common expense funds, if failure to make the repair or replacement would have a material adverse effect upon the health, safety, or welfare of the unit owners, the common elements, or the income and common expenses of the unit owners' association. The repair or replacement may be at the expense of the unit owners' association or, if a limited number of units are affected, at the expense of the unit owners affected.

(b) Repealed.

(c) Repealed. (1973 Ed., § 5-1247; Mar. 29, 1977, D.C. Law 1-89, title III, § 307, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(aa), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1864.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Implied warranties not limited to those enumerated in former subsection (b).** — The implied warranties found in subsection (b) [repealed] are not the only implied warranty obligations owed by developers to unit owners.

Towers Tenant Ass'n v. Towers Ltd. Partnership, 563 F. Supp. 566 (D.D.C. 1983).

**Duty to maintain common elements.** — If the only basis for installing a new window in a unit was to form a better seal to prevent damage to the common elements, or for aesthetic or safety purposes, the Board could not unilaterally do so over the opposition of a unit owner, at least not pursuant to a power implied from the Board's duty to maintain common elements. Marlyn Condominium, Inc. v. McDowell, App. D.C., 576 A.2d 1346 (1990).

## § 45-1848. Unit owners' associations; powers and rights; deemed attorney-in-fact to grant and accept beneficial easements.

(a) Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified herein, the unit owners' association shall have the:

- (1) Power to adopt and amend bylaws or rules and regulations;
- (2) Power to adopt and amend a budget for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
- (3) Power to hire or discharge a managing agent or other employees, agents, or independent contractors;
- (4) Power to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium;
- (5) Power to make a contract or incur liability;
- (6) Power to regulate the use, maintenance, repair, replacement, or modification of common elements;
- (7) Power to cause an additional improvement to be made as a part of the common elements;
- (8) Power to acquire, hold, encumber, or convey in the name of the unit owners' association any right, title, or interest to real or personal property;

(9) Power to grant an easement, lease, license, or concession through or over the common elements;

(10) Power to impose on and receive from individual unit owners any payment, fee, or charge for the use, rental, or operation of the common elements or for any service provided to unit owners;

(11) Power to impose a charge for late payment of an assessment and, after notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;

(12) Power to impose a reasonable charge for the preparation and recordation of an amendment to the condominium instruments, a statement concerning the resale of units required by § 45-1871, or a statement of an unpaid assessment;

(13) Power to provide for the indemnification of officers or the executive board of the unit owners' association and maintain liability insurance for directors or officers;

(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments, but only to the extent the condominium instruments expressly so provide;

(15) Power to exercise any other power conferred by the condominium instruments;

(16) Power to exercise any other power that may be exercised in the District of Columbia by a legal entity of the same type as the unit owners' association; and

(17) Power to exercise any other power necessary and proper for the governance or operation of the unit owners' association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title to grant easements through the common elements and accept easements benefiting the condominium or any part thereof.

(c) The condominium instruments may not impose any limitation on the power of the unit owners' association to deal with the declarant that is more restrictive than the limitation imposed on the power of the unit owners' association to deal with any other person.

(d) In the performance of duties, an officer or member of the executive board shall exercise the care required of a fiduciary of the unit owners. (1973 Ed., § 5-1248; Mar. 29, 1977, D.C. Law 1-89, title III, § 308, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(bb), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1858.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Condominium instruments limited statutory powers.** — Where the condominium documents provided only one method for making an assessment for common elements expenses, a pro rata allocation of costs among all unit owners, they limited the Board of Direc-

tors' power to impose a move-in fee under an alternative method of assessment and rendered this section inapplicable. *Westbridge Condominium Ass'n v. Lawrence*, App. D.C., 554 A.2d 1163 (1989).

**This section vests authority in board of directors of condominium association to grant conservation easement in facade of**

**condominium building** in question without approval by the unit owners unless such authority is restricted by the condominium instruments. *Ochs v. L'Enfant Trust*, App. D.C., 504 A.2d 1110 (1986).

**Authority to regulate parking.** — See *Johnson v. Hobson*, App. D.C., 505 A.2d 1313 (1986).

## **§ 45-1849. Tort and contract liability of association and declarant; judgment liens against common property and individual units.**

(a) An action for tort alleging a wrong done: (1) by any agent or employee of the declarant or of the unit owners' association; or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of ownership of an undivided interest in the common elements or by reason of membership in the association or status as an officer.

(b) Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 45-1831 and 45-1832.

(c) An action arising from a contract made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to § 45-1842(a). No unit owner shall be precluded from bringing such an action by reason of membership in the association or status as an officer.

(d) A judgment for money against the unit owners' association shall be a lien against any property owned by the unit owners' association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to § 45-1852(c), but no unit owner shall be otherwise liable on account of a judgment and, after payment by the unit owner of his or her proportionate share, the association shall not assess or have a lien against the unit owner's condominium unit for any portion of the common expenses incurred in connection with the lien. If after payment by a unit owner of a proportionate share, the unit owners' association elects to pay the balance of the judgment from common funds, the unit owners' association shall reimburse the unit owner for the amount the unit owner paid separately. Any judgment shall be satisfied first out of the property of the unit owners' association. The judgment shall be otherwise subject to the provisions of Title 15. (1973 Ed., § 5-1249; Mar. 29, 1977, D.C. Law 1-89, title III, § 309, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(cc), 38 DCR 261; Apr. 18, 1996, D.C. Law 11-110, § 48(a), 43 DCR 530.)

**Section references.** — This section is referred to in § 45-1801.

validated a previously made stylistic change in (d).

**Effect of amendments.** — D.C. Law 11-110

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995 and January 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

## § 45-1850. Insurance obtained by association; notice to unit owners.

(a) When any insurance policy has been obtained by or on behalf of the unit owners’ association, written notice of the procurement thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners’ association. Such notices shall be sent in accordance with the provisions of the last sentence of § 45-1843.

(b) Commencing not later than the time of the first conveyance of a condominium unit to a person other than a declarant, the unit owners’ association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than 90% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the condominium instruments that covers all occurrences commonly insured against for death, bodily injury, or property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(c) If a building contains units that have horizontal boundaries described in the condominium instruments, the insurance maintained under subsection (b) (1) of this section, to the extent reasonably available, shall include the units, but need not include an improvement or betterment installed by unit owners.

(d) If the insurance described in subsections (b) and (c) of this section is not reasonably available, the unit owners’ association shall promptly cause notice of the unavailability of insurance to be hand-delivered or sent prepaid by the United States mail to all unit owners. The condominium instruments may require the unit owners’ association to carry any other insurance the unit owners’ association deems appropriate to protect the unit owners’ association or the unit owners.

(e) An insurance policy carried pursuant to subsection (b) of this section shall provide that:

(1) A unit owner is an insured person under the policy with respect to liability that arises out of the unit owner’s interest in the common elements or membership in the unit owner’s association;

(2) The insurer waives the insurer’s right to subrogation under the policy against any unit owner or member of the unit owner’s household;

(3) An act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the unit owners' association, shall not void the policy or be a condition to recovery under the policy;

(4) If at the time of loss under the policy, there is other insurance in the name of a unit owner that covers the same risk covered by the policy, the unit owners' association's policy shall provide primary insurance; and

(5) If the unit owners' association brings suit against a unit owner, or vice versa, with respect to any loss, the insurer shall provide for the defense of the defendant.

(f) Any loss covered by the property policy under subsections (b)(1) and (c) of this section shall be adjusted with the unit owners' association, but the insurance proceeds for the loss shall be payable to any insurance trustee designated to receive payments or otherwise to the unit owners' association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the unit owners' association shall hold any insurance proceeds in trust for unit owners or lienholders as the unit owners' or lienholders' interests may appear. Subject to the provisions of subsection (i) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property. A unit owner or lienholder shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(g) An insurance policy issued to the unit owners' association shall not prevent a unit owner from obtaining insurance for his or her own benefit.

(h) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the unit owners' association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer that issues the policy may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the unit owners' association, any unit owner, and any mortgagee or beneficiary under the deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(i) Any portion of the condominium for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the unit owners' association unless the condominium is terminated, repair or replacement would be illegal under any health or safety statute, rule, or regulation, or 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense. If the entire condominium is not repaired, the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium. The insurance proceeds attributable to the units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements appertained, or to lienholders, as their interests may appear. The remainder of the proceeds shall be distributed to all the unit

owners or lienholders, as their interests may appear, in proportion to the interests in the common elements appertaining to all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests shall be automatically reallocated upon the vote as if the unit had been condemned under § 45-1806, and the unit owners' association promptly shall prepare, execute, and record an amendment to the condominium instruments reflecting the reallocations. Notwithstanding the provisions of this subsection, § 45-1838 governs the distribution of insurance proceeds if the condominium is terminated.

(j) The bylaws shall specify insurance coverage and limits with respect to any insurance policy that may be required on the common elements and shall indicate who shall be responsible for payment of any deductible amount in connection with the insurance policy.

(k) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use. (1973 Ed., § 5-1250; Mar. 29, 1977, D.C. Law 1-89, title III, § 310, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(dd), 38 DCR 261; Apr. 18, 1996, D.C. Law 11-110, § 48(b), 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 validated a previously made stylistic change in (f).

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 11-110.** — See note to § 40-1849.

## § 45-1851. Rights to surplus funds.

Unless otherwise provided in the condominium instruments, any surplus funds of the unit owners' association that remain after payment of or provision for common expenses and any prepayment of reserves shall be paid to the unit owners in proportion to the unit owners' liabilities for common expenses or credited to the unit owners to reduce the unit owners' future common expense assessments. (1973 Ed., § 5-1251; Mar. 29, 1977, D.C. Law 1-89, title III, § 311, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ee), 38 DCR 261.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1852. Liability for common expenses; special assessments; proportionate liability fixed in bylaws; installment payment of assessments; when assessment past due; interest thereon.

(a) Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than 1 condominium unit, however, such expenses shall be specially assessed

against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

(b) To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases.

(c) The amount of any common expense not specially assessed pursuant to subsection (a) or (b) of this section shall, subject to the provisions of subsection (f) of this section, be assessed against the condominium units, including the condominium units owned by the declarant, in accordance with the provisions of the condominium instruments. The bylaws may establish the fraction or percentage of liability for such expenses appertaining to each condominium unit proportionate to either the size or par value of such condominium unit. Otherwise, the bylaws shall allocate to each such condominium unit an equal liability for such expenses, subject to the following exception: each convertible space shall be allocated a liability for common expenses proportionate to the size of each such space, vis-a-vis the aggregate size of all units, while the remaining liability for common expenses shall be allocated equally to the other units. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) If the condominium instruments provide for any common expense assessments to be paid in installments, such instruments may further provide that upon default in the payment of any 1 or more of such installments, the balance thereof shall be accelerated, or that the said balance may be accelerated at the option of the unit owners' association, its executive board, or the managing agent.

(e) Unless the condominium instruments provide otherwise, unpaid assessments for common expense and unpaid installments of such assessments shall become past due on the 15th day from the day such assessment or installment thereof first became due and payable, and any past due assessment or installment thereof shall bear interest at the lesser of 10% per annum or the maximum rate permitted to be charged in the District of Columbia to natural persons on first mortgage loans at the time such assessment or installment became past due.

(f) Unless the condominium instruments provide otherwise, the declarant may elect to pay all common expenses for a period not to exceed 1 year from the conveyance of the first condominium unit to a purchaser. If the declarant elects, common expenses shall not be assessed against any condominium unit or imposed upon or collected from any unit owner, and the declarant shall pay all the costs including the costs of any contributions to reserve accounts as set forth in the budget of the condominium described in § 45-1864. (1973 Ed.,

§ 5-1252; Mar. 29, 1977, D.C. Law 1-89, title III, § 312, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ff), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1812, 45-1845, 45-1849, and 45-1853.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Assessment for conveyance of conservation easement in facade of condominium was authorized** by a bylaw which allowed assessment to defray the cost of a "nonrecur-

ring contingency." Ochs v. L'Enfant Trust, App. D.C., 504 A.2d 1110 (1986).

**Bylaw allowing for disproportionate assessment of common expense satisfied subsection (b).** — See Ochs v. L'Enfant Trust, App. D.C., 504 A.2d 1110 (1986).

**Cited** in Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, App. D.C., 548 A.2d 87 (1988); Westbridge Condominium Ass'n v. Lawrence, App. D.C., 554 A.2d 1163 (1989).

### **§ 45-1853. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.**

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be alien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

(A) A lien or encumbrance recorded prior to the recordation of the declaration;

(B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or

(C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. The immediately preceding institution of an action to enforce the lien. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien

and no further recordation of any claim of lien for assessment shall be required.

(c)(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due, unless the condominium instruments provide otherwise. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.

(3) The power of sale may be exercised by the executive board on behalf of the unit owners' association, and the executive board shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be *prima facie* evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

(4) A foreclosure sale shall not be held until 30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.

(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.

(6) The proceeds of a sale shall be applied:

- (A) To any unpaid assessment with interest or late charges;
- (B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and
- (C) The balance to any person legally entitled to the proceeds.

(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive

board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to § 45-1819.

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to § 45-1852(c).

(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full. (1973 Ed., § 5-1253; Mar. 29, 1977, D.C. Law 1-89, title III, § 313, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(gg), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(k), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(k), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1801, 45-1812, and 45-1871.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**Applicability of subsection (c).** — Absent some evidence of acquiescence by condominium owner, power of sale mechanism in subsection (c) which was enacted after the condominium documents were recorded and after the owner purchased his unit could not be interpreted to apply retroactively to alter the contractual right between condominium owners and their owners' associations. Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, App. D.C., 548 A.2d 87 (1988).

**Attorney fees.** — The statutory requirement that attorney fees be reasonable imposes upon the condominium association the duty to

provide information supporting the fee request, and upon the trial court, the duty to evaluate the request according to the required method in this jurisdiction. Robinson v. Fairfax Village Condominium VIII, App. D.C., 600 A.2d 94 (1991).

**An action for wrongful or improper foreclosure may lie** where the property owner sustains damages by reason of a foreclosure executed in a manner contrary to law. Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, App. D.C., 641 A.2d 495 (1994).

**Appellant condominium owner was entitled to a jury trial** on his claim for the two prior wrongful foreclosures; therefore, the trial court erred in denying him a jury trial on that separate claim. Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, App. D.C., 641 A.2d 495 (1994).

**Cited** in Reynolds v. Gateway Georgetown Condominium Ass'n, App. D.C., 482 A.2d 1248 (1984); Lonon v. Board of Dirs., App. D.C., 535 A.2d 1386 (1988).

## § 45-1854. Financial records.

The unit owners' association shall keep books with detailed accounts in chronological order of the unit owners' association's income and expenditures. The books and the vouchers accrediting the entries shall be made available for examination by a unit owner or the unit owner's attorney, accountant, or authorized agent during reasonable hours on business days. The books shall be kept in a manner verifiable upon an audit and shall be subjected to an independent financial review at least once annually. The books shall be subject to an independent audit upon the request of unit owners of units to which at least 33½% of the votes in the unit owners' association appertain or a lower percentage as may be specified in the condominium instruments. (1973 Ed., § 5-1254; Mar. 29, 1977, D.C. Law 1-89, title III, § 314, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(hh), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1855. Limitation on right of first refusal and other restraints on alienation; recordable statement of waiver of rights to be supplied promptly upon request.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of any of the condominium units, such rights and restraints shall be void unless the condominium instruments make provisions for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to

exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, its executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide. (1973 Ed., § 5-1255; Mar. 29, 1977, D.C. Law 1-89, title III, § 315, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(ii), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1871.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1856. Warranty against structural defects; limitation for conversion condominiums; exclusion or modification of warranty.

(a) As used in this section, the term "structural defect" means a defect in a component that constitutes any unit or portion of the common elements that reduces the stability or safety of the structure below standards commonly accepted in the real estate market, or restricts the normally intended use of all or part of the structure and which requires repair, renovation, restoration, or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) A declarant shall warrant against structural defects in each of the units for 2 years from the date each unit is first conveyed to a bona fide purchaser, and all of the common elements for 2 years. The 2 years shall begin as to any portion of the common elements whenever the portion has been completed or, if later:

(1) If within any additional land or portion thereof that does not contain a unit, at the time the additional land is added to the condominium;

(2) If within any convertible land or portion thereof that does not contain a unit, at the time the convertible land may no longer be converted;

(3) If within any additional land or convertible land or portion of either that does contain a unit, at the time the first unit therein is first conveyed to a bona fide purchaser; or

(4) If within any other portion of the condominium, at the time the first unit is conveyed to a bona fide purchaser.

(c) A declarant of a conversion condominium may offer the units, common elements, or both in "as is" condition. If the conversion condominium is offered in "as is" condition, the declarant's warranty against structural defects shall apply only to a defect in components installed by the declarant or work done by the declarant unless the declarant gives a more extensive warranty in writing.

(d) Except with respect to a purchaser of a unit that may be used for residential purposes, the warranty against structural defects:

(1) May be excluded or modified by agreement of the parties; and

(2) Is excluded by an expression of disclaimer such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(e) The declarant shall post a bond with the Mayor in the sum of 10% of the estimated construction or conversion costs, or shall provide any other security the Mayor shall prescribe, to satisfy any costs that arise from the declarant's failure to satisfy the requirements of this section. The bond or other security shall be posted or given prior to the first conveyance of the first unit to a purchaser and shall be continued until the end of the warranty period on each unit and on the common elements. (Mar. 29, 1977, D.C. Law 1-89, title III, § 316, as added Mar. 8, 1991, D.C. Law 8-233, § 2(jj), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(l), 39 DCR 683.)

**Section references.** — This section is referred to in § 45-1857.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## **§ 45-1857. Statute of limitations for warranties.**

A judicial proceeding for breach of any warranty that arises under § 45-1856 shall be commenced within 5 years after the date the warranty period began. (Mar. 29, 1977, D.C. Law 1-89, title III, § 317, as added Mar. 8, 1991, D.C. Law 8-233, § 2(kk), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(m), 39 DCR 683.)

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## **§ 45-1858. Master associations — Authorization; powers; rights and responsibilities of unit owners; election of executive board.**

(a) If the condominium instruments for a condominium provide that any of the powers described in § 45-1848 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or incorporated association that exercises the powers described in § 45-1848 or other powers on behalf of 1 or more condominiums or for the benefit of the unit owners of 1 or more condominiums, all provisions of this chapter applicable to unit owners' associations shall apply to the for-profit or nonprofit corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in § 45-1844, it may exercise the powers set forth in § 45-1848(a)(2) only to the extent expressly permitted in the condominium instruments of condominiums that are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the condominium instruments of any condominium provide that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the powers following delegation.

(d) The rights or responsibilities of a unit owner with respect to the unit owners' association set forth in §§ 45-1842, 45-1843, 45-1844, 45-1845, and 45-1860 shall apply in the conduct of the affairs of a master association only to any person who elects the board of a master association, whether or not the person is otherwise a unit owner within the meaning of this chapter.

(e) Notwithstanding the provisions of § 45-1842(a) with respect to the election of the executive board of a unit owners' association by all unit owners after the period of declarant control ends, and regardless of whether a master association is an association described in § 45-1841, the certificate of incorporation or other instrument that creates the master association and the condominium instruments of each condominium, the powers of which are assigned by the condominium instruments or delegated to the master association, may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of the executive board;

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of the executive board;

(3) All unit owners of each condominium subject to the master association may elect specified members of the executive board; or

(4) All members of the executive board of each condominium subject to the master association may elect specified members of the executive board. (Mar. 29, 1977, D.C. Law 1-89, title III, § 318, as added Mar. 8, 1991, D.C. Law 8-233, § 2(l), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1802.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1859. Merger or consolidation of condominiums.

(a) Any 2 or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. Unless the agreement otherwise provides, if 2 or more condominiums merge or consolidate the resultant condominium shall be, for all purposes, the legal successor of all of the preexisting condominiums, and the operations or activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association. The single unit owners' association shall hold any power, right, obligation, asset, or liability of all preexisting unit owners' associations.

(b) An agreement of 2 or more condominiums to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the unit owners' association of each of the preexisting condominiums following approval by

owners of units to which are allocated the percentage of votes in each condominium required to terminate the condominium.

(c)(1) A merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either by stating the reallocations or the formulas upon which the reallocations are based, or by stating the percentage of overall allocated interests of the new condominiums which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated interests allocated to that unit by the condominium instruments of the preexisting condominium.

(2) For purposes of this section, the term "allocated interests" shall mean the individual interest in the common elements, the liability for common expenses, and the votes in the unit owners' association that pertain to each unit. (Mar. 29, 1977, D.C. Law 1-89, title III, § 319, as added Mar. 8, 1991, D.C. Law 8-233, § 2(mm), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1802.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## **§ 45-1860. Conveyance or encumbrance of common elements.**

(a) A portion of the common elements may be conveyed or subjected to a security interest by the unit owners' association if persons entitled to cast at least 80% of the votes in the unit owners' association, including 80% of the votes allocated to units not owned by a declarant, or any larger percentage the condominium instruments specify, agree to convey or subject to a security interest. To convey or subject a limited common element to a security interest, all the owners of units to which any limited common element is allocated shall agree. The condominium instruments may specify a smaller percentage if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale shall be an asset of the unit owners' association.

(b) An agreement to convey or subject common elements to a security interest shall be evidenced by the execution and recordation of the agreement, or ratification of the agreement, in the same manner as a deed, and by the requisite number of unit owners. The agreement shall specify a date after which the agreement shall be void unless recorded before that date.

(c) The unit owners' association, on behalf of the unit owners, may contract to convey or subject common elements to a security interest. The contract shall not be enforceable against the unit owners' association until approved pursuant to subsections (a) and (b) of this section. Upon approval, the unit owners' association shall have any power necessary and appropriate to effect the conveyance or encumbrance of the common elements, including the power to execute a deed or other instrument.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements pursuant to this section shall not deprive any unit of the unit's right of access or support.

(e) Unless the condominium instruments otherwise provide, a conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of a preexisting encumbrance. (Mar. 29, 1977, D.C. Law 1-29, title III, § 320, as added Mar. 8, 1991, D.C. Law 8-233, § 2(nn), 38 DCR 261.)

**Section references.** — This section is referred to in § 45-1858.

**Legislative history of Law 8-233.** — See note to § 45-1807.

### § 45-1860.1. Unit owners' association as trustee.

With respect to a third person that deals with the unit owners' association in the unit owners' association's capacity as a trustee, the existence and proper exercise of trust powers by the unit owners' association, may be assumed without inquiry. A third person shall not be bound to inquire whether the unit owners' association has the power to act as trustee or is properly exercising trust powers. A third person without actual knowledge that the unit owners' association is exceeding or improperly exercising its powers is fully protected in dealing with the unit owners' association as if the unit owners' association possessed and properly executed the powers the unit owners' association purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the unit owners' association in its capacity as trustee. (Mar. 29, 1977, D.C. Law 1-89, title III, § 321, as added Mar. 8, 1991, D.C. Law 8-233, § 2(oo), 38 DCR 261.)

**Legislative history of Law 8-233.** — See note to § 45-1807.

## *Subchapter IV. Registration and Offering of Condominiums.*

### § 45-1861. Exemptions.

Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 45-1862, 45-1863, 45-1864, 45-1865, 45-1866, 45-1867, 45-1868, 45-1869, and 45-1872 do not apply to:

- (1) Dispositions in a condominium in which all units are restricted to commercial, industrial, or other nonresidential use;
- (2) Dispositions pursuant to court order;
- (3) Dispositions by any government or government agency;
- (4) Solicitation and acquisition by the declarant of nonbinding reservation agreements;
- (5) Gratuitous dispositions; or
- (6) Dispositions by foreclosure or deed in lieu of foreclosure. (1973 Ed., § 5-1261; Mar. 29, 1977, D.C. Law 1-89, title IV, § 401, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(pp), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1871.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**§ 45-1862. No offer or disposition of unit prior to registration; current public offering statement; right of cancellation by purchaser; form therefor prescribed by Mayor.**

(a) Neither declarant nor any person on behalf of declarant may offer or dispose of any interest in a condominium unit located in the District of Columbia, nor dispose in the District of Columbia of any interest in a condominium unit located without the District of Columbia prior to the time the condominium including such unit is registered in accordance with this chapter.

(b) During any period when registration of a condominium is required by this chapter or until the time that all units in the condominium have been initially disposed of to the bona fide purchasers, a declarant may not dispose of any interest in a condominium unit not previously disposed of unless there is delivered to the purchaser a current public offering statement by the time of the disposition. The disposition shall be expressly and without qualification or condition subject to cancellation by the purchaser before conveyance of the unit, within 15 days after the date of execution of the contract for the disposition, or within 15 days after delivery of the current public offering statement, whichever is later. A public offering statement shall not be current unless any necessary amendment is incorporated or attached. If the purchaser elects to cancel, he or she may cancel by notice hand-delivered or sent by United States mail, return receipt requested, to the seller. The cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

(c) The public offering statement and sales contract shall contain a clause and its Spanish equivalent in a form prescribed by the Mayor which shall clearly state the purchaser's right to cancel.

(d) A declarant shall be liable under this chapter for any false or misleading statement in a public offering statement or for any omission of a material fact with respect to the portion of the public offering statement that he or she prepared or caused to be prepared. If a declarant did not prepare or cause to be prepared any part of a public offering statement that he or she delivers, the declarant shall not be liable for any false or misleading statement or any omission of a material fact unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission. (1973 Ed., § 5-1262; Mar. 29, 1977, D.C. Law 1-89, title IV, § 402, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(qq), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1861.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807. **Cited** in Dresser v. Sunderland Apts. Tenants Ass'n, App. D.C., 465 A.2d 835 (1983).

**§ 45-1863. Application for registration; contents; later registration of additional units; availability for public inspection; fee to be determined by Mayor.**

(a) The application for registration of the condominium shall be filed as prescribed by the Mayor's rules and shall contain the following documents and information:

(1) An irrevocable appointment of an agent in the District of Columbia, and in the absence of such an agent, the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or applicant's personal representative;

(2) The states or jurisdictions in which an application for registration or similar document pertaining to the condominium has been filed, and any adverse order, judgment, or decree by any regulatory authority or by any court entered against declarant or any other person referred to in paragraph (3) of this subsection in connection with:

(A) Any registration, offer of sale of any condominium or condominium units;

(B) Any violation of any condominium statute or any lack of compliance with a condominium instrument; and

(C) Any breach of contract, fraud or misrepresentation perpetrated against any unit owner, unit owner association or unit purchaser;

(3) The name, address, and principal occupation for the past 5 years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of such person's interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

(4) A statement, in a form acceptable to the Mayor, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the Mayor;

(5) Copies of any management agreements, employment contracts or other contracts or agreements affecting the use or maintenance of, or access to, all or a part of the condominium;

(6) Plats and plans of the condominium that comply with the provisions of § 45-1824 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands; except that the Mayor may by regulation or order waive or modify this requirement or the requirements of § 45-1824 for plats and plans of a condominium located outside the District of Columbia; and

(7) The proposed public offering statement; and

(8) Any other information, including any current financial statement, which the Mayor by his regulations requires for the protection of purchasers.

(b) If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

(c) The declarant shall maintain a copy of the application for registration at the declarant's principal office at the condominium. The application for registration shall be made available for public inspection upon request at reasonable times; provided, however, that the Mayor may grant confidential status to any information required pursuant to § 45-1864(a)(11). The declarant shall promptly report any material changes in the information contained in an application for registration and amend the application accordingly.

(d) Each application shall be accompanied by a fee in an amount determined by the Mayor. The amount of such fee shall be established at a rate adequate to cover the costs related to processing such application and to provide additional funds to be available to defray the costs of administering this chapter. (1973 Ed., § 5-1263; Mar. 29, 1977, D.C. Law 1-89, title IV, § 403, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1619, 45-1861, and 45-1872.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## **§ 45-1864. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.**

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Mayor shall be in a form prescribed by his rules and shall include:

(1) The name and principal address of the declarant and the condominium;

(2) The applicant's name, address, and the form, date, and jurisdiction of organization, the address of each of its offices in the District of Columbia, the names and addresses of all general partners if applicant is a partnership, and all directors and owners of 10% or more of the beneficial interest in the stock of applicant if applicant is a corporation;

(3) To the extent that such information is reasonably available to applicant, the names and addresses of the attorney primarily responsible for the preparation of the condominium documents, the general contractor, if any, all contractors who are primarily responsible for the construction, reconstruction or renovation of the electrical, plumbing or mechanical systems or the roof of the condominium, and the architect and engineer primarily responsible for the design, construction or renovation of the condominium;

(4) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and the number of units to be rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

(5) A copy of the condominium instruments, with a brief narrative statement describing each and including:

(A) Information on declarant control;

(B) A projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit);

(C) Provisions for enforcement of liens for assessments;

(D) A statement of the amount, or a statement that there is no amount, included in the projected budget as a reserve for repairs and replacement;

(E) The estimated amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fees;

(F) A description of any restraints on alienation; and

(G) A description of any service not reflected in the proposed budget that the declarant shall provide or expenses that he or she shall pay, and that he or she expects may become, at any subsequent time, a common expense of the unit owners' association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(6) Copies of the deed that shall be delivered to a purchaser to evidence his or her interest in the unit and of the contract of sale that a purchaser shall be required to sign;

(7) A copy of any management contract, lease of recreational areas, and any other contract or agreement substantially affecting the use or maintenance of, or access to all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, the condominium unit owners and the condominium, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

(8) A general statement of:

(A) The status of construction;

(B) The project's compliance with zoning, site plan and building permit regulations;

(C) Source of financing available and the estimated amount necessary to complete all improvements shown on the plats and plans as "not yet completed" or "not yet begun" which declarant is obligated to complete; and

(D) The projected date of completion of construction or renovation of the major amenities of the condominium;

(9) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

(10) The significant terms of any financing offered by or through the declarant to purchasers of units in the condominium;

(11) The provisions and any significant limitations of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by § 45-1847(b) [repealed];

(12) A statement that the contract purchaser of a condominium unit may, prior to conveyance, cancel the purchase transaction within 15 days following the date of execution of the contract by the purchaser or the receipt of a current public offering statement, whichever is later;

(13) A statement as to whether or not the condominium satisfies, or is expected to satisfy, the special requirements pertaining to condominiums established by federal, federally chartered or District of Columbia institutions which insure, guarantee or maintain a secondary market for condominium unit mortgages;

(14) Additional information required by the Mayor to assure full and fair disclosure to prospective purchasers; and

(15) Repealed.

(a-1) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by subsection (a) of this section:

(1) The total number of units in which time-share estates may be created;

(2) The total number of time-share estates that may be created in the condominium;

(3) The projected common expense assessment for each time-share estate and whether the assessment may vary seasonally;

(4) A statement that shall include:

(A) Any service that the declarant shall provide or any expense that the declarant shall pay, if the service or expense is not reflected in the budget and the declarant expects that the expense or service may later become a common expense of the unit owners' association; and

(B) The projected common expense assessment attributable to any expense or service listed pursuant to subparagraph (A) of this paragraph for each time-share estate;

(5) Repealed;

(6) The extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against the unit;

(7) The extent to which a suit for partition may be maintained against a unit owned in time-share estates; and

(8) The extent to which a time-share estate may become subject to a tax or other lien that arises out of claims against other time-share owners of the same unit.

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the Mayor approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement if such emphasis is intended to mislead the prospective purchaser or to otherwise conceal material facts, except that there may be a cover sheet for such public offering statement using such design, pictures and words as the Mayor may

deem reasonable. The form, content, and layout of the public offering statement shall be subject to approval by the Mayor.

(c) The declarant shall file with the Mayor a statement of any material change in the information contained in the public offering statement. Such statement shall be filed within 15 days after the date on which the declarant knows or should have known about the change. The Mayor may require the declarant to amend the public offering statement if necessary to assure full and fair disclosure to prospective purchasers. A public offering statement is not current unless any necessary amendments are incorporated therein or attached thereto. Such amendments must be mailed by United States registered mail, return receipt requested. Such receipt shall be kept on file for review.

(d) The provisions of this section shall be deemed to be complied with if the public offering statement filed pursuant to the provisions of paragraph (9) of subsection (a) of this section is for offers of units currently registered as securities with the Securities and Exchange Commission.

(e) In the case of a condominium situated wholly outside the District of Columbia, an application for registration or a proposed public offering statement filed with the Mayor, which has been approved by an agency in the state where the condominium is located and substantially complies with the requirements of this chapter, may not be rejected by the Mayor on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by rules and regulations issued by the Mayor pursuant to this chapter. The Mayor may require additional documents or information in a particular case to assure adequate and accurate disclosure to prospective purchasers. (1973 Ed., § 5-1264; Mar. 29, 1977, D.C. Law 1-89, title IV, § 404, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(rr), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(l), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(n), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1852, 45-1861, 45-1863, and 45-1868.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

**Cited** in Dresser v. Sunderland Apts. Tenants Ass'n, App. D.C., 465 A.2d 835 (1983).

## § 45-1865. Application for registration — Investigation by Mayor upon receipt.

Upon receipt of an application for registration in proper form, the Mayor may forthwith initiate an investigation to determine:

(1) That there is reasonable assurance that the declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

(2) That there is reasonable assurance that all proposed improvements will be completed as represented;

(3) That the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Mayor in its rules and afford full and fair disclosures;

(4) Whether the declarant has, or if a corporation its officers and principals have, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the United States or any foreign country within the past 10 years, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(5) The public offering statement requirements of this chapter have been satisfied. (1973 Ed., § 5-1265; Mar. 29, 1977, D.C. Law 1-89, title IV, § 405, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1801, 45-1861, and 45-1866.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1866. Same — Notice of filing; registration or rejection; notice of need for rejection; hearing.**

(a) Upon receipt of the application for registration in proper form, the Mayor shall, within 5 business days, issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the Mayor shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the Mayor affirmatively determines, upon inquiry and examination, that the requirements of § 45-1865 have been met, he shall enter an order registering the condominium and may require any additions, deletions, or modifications in and to the public offering statement in order to assure full and fair disclosure.

(c) If the Mayor determines upon inquiry and examination, that any of the requirements of § 45-1865 have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days or such longer period as he may prescribe. If the requirements are not met within the time allowed the Mayor shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after the lapse of the aforesaid period during which 20-day period the applicant may petition for reconsideration and shall be entitled to a hearing to contest the particulars specified in the Mayor's notice. Such order of rejection shall not take effect during the pendency of a hearing, if requested. (1973 Ed., § 5-1266; Mar. 29, 1977, D.C. Law 1-89, title IV, § 406, 23 DCR 9532b.)

**Cross references.** — As to exceptions to coverage of rental housing conversion procedures and expiration provisions thereof, see § 45-1618.

**Section references.** — This section is referred to in §§ 45-1603, 45-1618, 45-1619, 45-1801, 45-1842, 45-1861, and 45-1876.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1867. Registration; annual updating report by declarant; termination.

The declarant shall, during any period of control of the condominium by the declarant pursuant to § 45-1842 file a report in the form prescribed by the rules of the Mayor within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration. In the event that the annual report reveals that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the Mayor shall issue an order terminating the registration of the condominium. (1973 Ed., § 5-1267; Mar. 29, 1977, D.C. Law 1-89, title IV, § 407, 23 DCR 9532b.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1861.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1868. Conversion condominiums; additional contents of public offering statement; notice of intent to convert; tenant's and subtenant's right to purchase; notice to vacate.

(a) Any declarant of a conversion condominium shall include in his public offering statement, in addition to the requirements of § 45-1864:

(1) Repealed;

(2)(A) A statement by the declarant based upon a report of a qualified architect or engineer as to the present condition of all structural components and major utility installations in the condominium. The statement shall include:

(i) The approximate dates of construction, installation, and major repairs of structural components and major utility installations and a general description of each installed system as particularly suitable or unsuitable for use in a conversion condominium;

(ii) An evaluation of the adequacy of each system to perform its intended function both before and after completion of the condominium conversion; and

(iii) The estimated life of the system components, and the estimated cost (in current dollars) of replacing each component that has a rated life that is evaluated to be less than the rated life of the entire structure.

(B) The architect's or engineer's report upon which the statement required by this subsection is based shall be filed with the Mayor as a part of the application for registration.

(b) In the case of a conversion condominium:

(1) The declarant shall give each of the tenants or subtenants of the building or buildings which the declarant submits to the provisions of this

chapter at least 120 days notice of the conversion before any such tenant or subtenant may be served with notice to vacate. Such notice of conversion shall be given no sooner than 10 days after the date the declarant's application for registration of the condominium units is approved. The notice shall be in such form as the Mayor may require and shall set forth generally the rights of tenants and subtenants pursuant to this section. Such notice shall be hand-delivered or sent by United States mail, return receipt requested. Such notice shall contain a statement indicating that such notice shall not be construed as abrogating any rights any tenant may have under a valid existing written lease;

(2) During the first 60 days of the 120-day notice period, each of the tenants who entered into an agreement with declarant or declarant's predecessor in interest to lease the apartment unit shall have the exclusive right to contract for the purchase of such apartment unit. If the tenants do not contract for the purchase of their apartment unit, during the second 60 days of such 120-day period, each of the subtenants, if any, who occupy the apartment unit under an agreement with the tenants shall have the exclusive right to contract for the purchase of such apartment unit. The exclusive right to contract for the purchase of such apartment units shall be on terms and conditions at least as favorable to the tenants or subtenants as those being offered by declarant to the general public. The right to contract for purchase granted to the tenants and subtenants, if any, of an apartment unit shall be granted only where the tenant or subtenant has remained, and on the date of the notice is, in substantial compliance with the terms of the lease or sublease agreement, and if such apartment unit is to be retained in the conversion condominium without substantial renovation or alteration in its physical layout. If there is more than 1 tenant, then each such tenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit and of a proportionate share of the share of any tenant who elects not to purchase. If the tenants do not contract for the purchase of the apartment unit and if there is more than 1 subtenant occupying the apartment unit, then each such subtenant shall be entitled to contract for the purchase of a proportionate share of the apartment unit occupied, and of a proportionate share of the share of any subtenant who elects not to purchase. In no case shall this subsection be deemed to authorize the purchase of less than the entire interest in the apartment unit to be conveyed;

(3) If the notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

(c) Each declarant of a conversion condominium shall assure that the budget established for the unit owners' association and upon which common expense assessments are made shall include an adequate provision for reasonable reserves to cover future maintenance, repair, or replacement costs associated with the common elements. (1973 Ed., § 5-1268; Mar. 29, 1977, D.C.

Law 1-89, title IV, § 408, 23 DCR 9532b; Sept. 10, 1980, D.C. Law 3-86, § 207, 27 DCR 2975; Mar. 8, 1991, D.C. Law 8-233, § 2(tt), 38 DCR 261.)

**Cross references.** — As to cooperative conversion, see § 45-1615.

**Section references.** — This section is referred to in §§ 45-1619, 45-1801, and 45-1861.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 3-86.** — Law 3-86, the "Rental Housing Conversion and Sale Act of 1980," was introduced in Council and assigned Bill No. 3-222, which was referred to

the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1869. Escrow of deposits; to bear interest; not subject to attachment.

Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until either delivered at settlement or returned to the prospective purchaser. Such escrow funds shall be deposited in a separate account for each condominium in a financial institution the accounts of which are insured by a federal or state agency. These deposits shall bear interest at the passbook rate then prevailing in the District of Columbia beginning with the first business day after the date deposited with declarant or declarant's agent. Earned interest shall be credited to the prospective purchaser's deposit. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant. (1973 Ed., § 5-1269; Mar. 29, 1977, D.C. Law 1-89, title IV, § 409, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1861.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1870. Copies of declaration and bylaws to be furnished to purchaser by declarant.

Unless previously furnished, an exact copy of the recorded declaration and bylaws shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in §§ 45-1811 and 45-1815. (1973 Ed., § 5-1270; Mar. 29, 1977, D.C. Law 1-89, title IV, § 410, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1871. Resale by unit owner; seller to obtain appropriate statements from association and furnish to purchaser; scope of provisions.

(a) In the event of a resale of a condominium unit by a unit owner other than the declarant, the unit owner shall obtain from the unit owners' association and furnish to the purchaser, on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, a copy of the condominium instruments and a certificate setting forth the following:

- (1) Appropriate statements pursuant to § 45-1853(h) and, if applicable, § 45-1855, which need not to be in recordable form;
- (2) A statement of any capital expenditures anticipated by the unit owners' association within the current or succeeding 2 fiscal years;
- (3) A statement of the status and amount of any reserves for capital expenditures, contingencies, and improvements, and any portion of such reserves earmarked for any specified project by the executive board;
- (4) A copy of the statement of financial condition for the unit owners' association for the then most recent fiscal year for which such statement is available and the current operating budget, if any;
- (5) A statement of the status of any pending suits or any judgments to which the unit owners' association is a party;
- (6) A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association and a statement whether such coverage includes public liability, loss or damage, or fire and extended coverage insurance with respect to the unit and its contents;
- (7) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;
- (8) A statement of the remaining term of any leasehold estate affecting the condominium or the condominium unit and the provisions governing any extension or renewal thereof; and
- (9) The date of issuance of the certificate.
  - (a-1)(1) If the condominium instruments and certificate prescribed pursuant to subsection (a) of this section are not furnished to the purchaser on or prior to the 10th business day following the date of execution of the contract of sale by the purchaser, the purchaser shall have the right to cancel the contract by giving notice in writing to the seller prior to receipt of the condominium instruments and certificate, but not after conveyance under the contract.
  - (2) Except as provided pursuant to paragraph (5) of this subsection, the purchaser shall have the right for a period of 3-business days following the purchaser's receipt of the condominium instruments and certificate prescribed pursuant to subsection (a) of this section, whether or not such receipt occurs within the time period described in subsection (a) of this section, to cancel the contract by giving notice in writing and returning the condominium instruments and certificate to the seller, provided that the purchaser may not so cancel the contract after conveyance under the contract.
  - (3) If the purchaser cancels the contract pursuant to paragraph (1) or (2) of this subsection, the purchaser shall receive back any earnest money or other deposit without delay or deduction.
  - (4) From and after the earlier of (i) the expiration of the 3-business-day period for review prescribed pursuant to paragraph (2) of this subsection, or an extension of the 3-business-day period agreed to by the parties in a signed writing, or (ii) conveyance under the contract, if the purchaser has not exercised the right to cancel, the contract shall not be cancellable by the purchaser under this subsection.
  - (5) If the condominium instruments and certificate are furnished to the purchaser on or prior to execution of the contract of sale by the purchaser, the

3 business-day period for review prescribed pursuant to paragraph (2) of this subsection shall commence when the contract is executed by the purchaser.

(b) The principal officer of the unit owners' association or such other officer or officers as the condominium instruments may specify, shall furnish the certificate prescribed by subsection (a) of this section upon the written request of any unit owner or purchaser within 10 days of the receipt of such request.

(c) Subject to the provisions of § 45-1861, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of Chapter 17 of Title 45. (1973 Ed., § 5-1271; Mar. 29, 1977, D.C. Law 1-89, title IV, § 411, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(uu), 38 DCR 261; Aug. 17, 1991, D.C. Law 9-38, § 2(m), 38 DCR 4966; Mar. 20, 1992, D.C. Law 9-82, § 2(o), 39 DCR 683.)

**Section references.** — This section is referred to in §§ 45-1801 and 45-1848.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

**Legislative history of Law 9-38.** — See note to § 45-1801.

**Legislative history of Law 9-82.** — See note to § 45-1801.

## **§ 45-1872. Mayor to administer chapter; rules and regulations; advertising materials; abbreviated public offering statement; court actions; intervention in suits involving condominiums; notice relating to conversion condominiums.**

(a) This chapter shall be administered by the Mayor or his designee. The Mayor shall prescribe reasonable rules which shall be adopted, amended or repealed in accordance with the provisions of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). The rules shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and such other rules as are necessary and proper to accomplish the purposes of this chapter. The initial such regulations shall be promulgated by the Mayor within 120 days after March 29, 1977.

(b) The Mayor by regulation, rule or order, after reasonable notice and hearing may require the filing of advertising material relating to condominiums prior to the distribution of such material.

(c) The Mayor may by regulation, rule or order approve the filing and use of an abbreviated public offering statement if the agency determines that the public interest and the interests of purchasers would best be served thereby. The Mayor shall determine whether or not such abbreviated disclosure will be permitted based upon consideration of the following factors among others:

(1) The total number of units being offered is small, which shall mean generally less than 10;

(2) Adequate disclosure of relevant information will otherwise be readily available to prospective purchasers;

(3) The class of purchasers will be comprised substantially of persons having the ability to protect their own interests (such as the present tenants); and

(4) In the case of a conversion condominium, no substantial renovation or remodeling of the units will be done.

(d) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule, regulation or order hereunder, the Mayor, with or without prior administrative proceedings may bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Mayor is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

(e) The Mayor may intervene in any suit involving the rights and liabilities of declarant with respect to the condominium being registered and any transactions related thereto. The Mayor may require the declarant to notify the Mayor of any suit by or against the declarant involving a condominium established or sold by the declarant.

(f) The Mayor may:

(1) Accept registrations filed in other jurisdictions or with the federal government;

(2) Contract with similar agencies in this or other jurisdictions to perform investigative functions; and

(3) Accept grants-in-aid from any governmental source.

(g) The Mayor shall notify the Rental Accommodations Commission whenever an application is made to register a conversion condominium and at such time as any application to register a conversion condominium is approved.

(h) With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with § 45-1863, the agency shall send the lawful process by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in the application or any annual report. (1973 Ed., § 5-1272; Mar. 29, 1977, D.C. Law 1-89, title IV, § 412, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(vv), 38 DCR 261.)

**Section references.** — This section is referred to in §§ 45-1801, 45-1861, and 45-1877.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 8-233.** — See note to § 45-1807.

## § 45-1873. Investigations and proceedings; powers of Mayor; enforcement through courts.

(a) The Mayor may make necessary public or private investigations in accordance with law within or outside of the District of Columbia to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.

(b) For the purpose of any investigation or proceeding under this chapter, the Mayor or any officer designated by rule may administer oaths or affirmations, and upon the Mayor's own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the Mayor may apply to the Superior Court of the District of Columbia for an order compelling compliance. (1973 Ed., § 5-1273; Mar. 29, 1977, D.C. Law 1-89, title IV, § 413, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

## § 45-1874. Cease and desist and affirmative action orders; temporary cease and desist orders; prior notice thereof.

(a) If the Mayor determines after notice and hearing that a person has: (1) violated any provision of this chapter; (2) directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional, or sales method to offer or dispose of a unit; (3) made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency; (4) disposed of any units which have not been registered with the agency; or (5) violated any lawful order or rule of the agency, the Mayor may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in his judgment will carry out the purposes of this chapter.

(b) If the Mayor makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order the Mayor may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Mayor shall give notice of the proposal to issue a temporary cease and desist order to the person affected. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not such order becomes permanent. (1973 Ed., § 5-1274; Mar. 29, 1977, D.C. Law 1-89, title IV, § 414, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1875. Revocation of registration; notice; hearing; written finding of fact; cease and desist order as alternative.**

(a)(1) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

(A) Failed to comply with the terms of a cease and desist order;

(B) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(C) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(D) Failed faithfully to perform any stipulation or agreement made with the Mayor as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(E) Made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the Mayor finds after notice and hearing that the declarant has been guilty of a violation for which revocation could be ordered, the agency may issue a cease and desist order instead. (1973 Ed., § 5-1275; Mar. 29, 1977, D.C. Law 1-89, title IV, § 415, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1876. Judicial review of mayoral actions.**

Proceedings for judicial review of mayoral actions shall be subject to and be in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.) applicable to “rule-making”; provided, however, that review of mayoral actions pursuant to § 45-1866 shall be subject to provisions applicable to “contested cases.” (1973 Ed., § 5-1276; Mar. 29, 1977, D.C. Law 1-89, title IV, § 416, 23 DCR 9532b.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**§ 45-1877. Penalties; prosecution by Corporation Counsel.**

(a) Any person who wilfully violates any provision of this chapter or any rule adopted under or order issued pursuant to § 45-1872 or any person who wilfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but

not more than \$50,000; or such person may be imprisoned for not more than 6 months; or both, for each offense. Prosecution for violations of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel or his assistants.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (1973 Ed., § 5-1277; Mar. 29, 1977, D.C. Law 1-89, title IV, § 417, 23 DCR 9532b; Oct. 5, 1985, D.C. Law 6-42, § 420, 32 DCR 4450.)

**Section references.** — This section is referred to in § 45-1801.

**Legislative history of Law 1-89.** — See note to § 45-1801.

**Legislative history of Law 6-42.** — See note to § 45-1656.

## § 45-1878. Severability.

If any provision of this chapter, or any paragraph, section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of this chapter, and of the application of any such provision, paragraph, section, sentence, clause, phrase or word in any circumstances shall not be affected thereby and to this end, the provisions of this chapter are declared severable. (1973 Ed., § 5-1278; Mar. 29, 1977, D.C. Law 1-89, title IV, § 418, 23 DCR 9532b.)

**Legislative history of Law 1-89.** — See note to § 45-1801.

## CHAPTER 19. REAL ESTATE AND BUSINESS CHANCE LICENSES.

Sec.	Sec.
45-1901 to 45-1918. [Repealed].	or revocation of license; grounds; penalty in lieu of suspension; probationary period; reinstatement.
45-1921. Purposes.	
45-1922. Definitions.	
45-1923. Real Estate Commission of the District of Columbia.	45-1937. Escrow accounts.
45-1924. Powers and duties of Mayor; evidentiary use of copies of Commission documents; record of Commission proceedings.	45-1938. Procedural requirements.
45-1925. Fees.	45-1939. Automatic suspension of license through affiliation; discharge or termination of employment or affiliation.
45-1926. Licensure of real estate brokers, real estate salespersons, and property managers.	45-1940. Prohibited acts.
45-1927. Qualifications for licensure.	45-1941. License suspended upon criminal conviction.
45-1928. Status of person previously licensed.	45-1942. Effect of criminal conviction upon license application.
45-1929. Licensure required for property managers.	45-1943. Effect of license revocation or suspension upon partnership, association, or corporation.
45-1929.1. Registration and certification required for resident managers.	45-1944. Suspension or revocation of property manager license; code of ethics applicable to all licensees.
45-1930. Qualifications for licensure of property managers.	45-1945. Written listing contract required.
45-1930.1. Waiver of examination and education requirements for property managers.	45-1946. Criminal penalties; prosecutions.
45-1931. Exemptions.	45-1947. Duties of Corporation Counsel.
45-1932. Transfer of license; change of status; brokerage firms.	45-1948. Establishment of Real Estate Guaranty and Education Fund; Mayor to determine sum for deposit into Fund.
45-1932.1. Licensure of legal entities.	45-1949. Applications for payments from Fund; maximum payment; management of Fund.
45-1933. Place of business.	45-1950. Additional criminal penalties.
45-1934. Prohibited names.	45-1951. Savings clause.
45-1935. Injunctions.	
45-1936. Investigation of conduct; suspension	

**§§ 45-1901 to 45-1918. Acting as broker or salesman without license unlawful; definitions; exceptions to license requirements; single act may constitute one “broker” or “salesman;” applicability of chapter; Real Estate Commission; creation; membership; terms; officers and staff; seal; records; compensation; annual audit; rules and regulations; license; qualifications; competency and proof thereof; prohibitions on license issuance; written application; brokers and salesmen; recommendations; firms, partnerships, etc., and members thereof; oath; fee; bond and surety; other proof of character; hearing before refusal to issue; form and contents; display; rehearing within 6 months; notice to licensee; fees; expiration; renewal; actions for compensation for service or for**

**enforcement of contracts; places of business; discharged or terminated salesmen; transferability; suspension or revocation; investigation upon complaint; prohibited acts; hearing by Commission before denial of application or suspension; written notice; procedure; court review of determination; copy of record; provisions applicable to nonresident brokers and salesmen; members of Commission authorized to administer oaths; court to enforce compliance with Commission; exemptions from license requirements; limitation on exemptions; list of licenses, suspensions, and revocations and report of Commission to be published annually; unlawful acts; misleading deeds, mortgages and deeds of trust; prizes and awards in connection with sale of property; commission to one not licensed; revocation of license upon conviction of certain crimes; suspension for indictment thereof; refusal for past convictions; revocation or suspension of member of copartnership or association; penalties; other liability; prosecutions by and advice of Corporation Counsel; bond required for renewal of licenses; separability.**

Repealed. Mar. 10, 1983, D.C. Law 4-209, § 34, 30 DCR 390.

**Legislative history of Law 4-209.** — See note to § 45-1921.

### § 45-1921. Purposes.

The purposes of this chapter are to revise the real estate licensure law; to establish educational and other qualifications for real estate brokers, real estate salespersons, and property managers; to establish registration and certification procedures for resident managers; to protect the public against incompetence, fraud, and deception in real estate transactions; to establish a Real Estate Guaranty and Educational Fund to compensate victims of unlawful real estate practices; and for other purposes. (Mar. 10, 1983, D.C. Law 4-209, § 2, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(a), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — Law

4-209, the “District of Columbia Real Estate Licensure Act of 1982,” was introduced in Council and assigned Bill No. 4-230, which was

referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Applicability of chapter to District of Columbia Housing Authority.** — Section 13 of D.C. Law 10-243, the District of Columbia Housing Authority Act of 1994, provided:

“(a) The provisions of Chapter 19 of Title 45 shall not apply to the property managers of housing properties within the jurisdiction of the Authority. The activities of property managers of housing properties shall be regulated by the applicable statutes, rules, and regulations of the United States in effect on March 21, 1995.

“(b) Execution or other judicial process shall not issue against the real property of the Authority nor shall any judgment against the Authority be a charge or lien upon its real property. This section shall not apply to or limit the right of obligees to foreclose or otherwise

enforce any mortgage on property of the Authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees, and revenues.”

**Applicability of chapter to commercial real estate transactions.** — This Act is designed to chill unlicensed practice by denying transgressors any recovery regardless of the services they provide or the status of their client. RDP Dev. Corp. v. Schwartz, App. D.C., 657 A.2d 301 (1995).

This Act applies to commercial real estate transactions involving knowledgeable and sophisticated parties who are capable of protecting themselves. RDP Dev. Corp. v. Schwartz, App. D.C., 657 A.2d 301 (1995).

**Unlicensed brokerage activity.** — The proscription against unlicensed brokerage activity does not apply only when the services provided included actual participation in the negotiation of the terms of a contract or lease. RDP Dev. Corp. v. Schwartz, App. D.C., 657 A.2d 301 (1995).

**Cited** in Kassatly v. Yazbeck, 739 F. Supp. 651 (D.D.C. 1990).

## § 45-1922. Definitions.

For purposes of this chapter:

(1) The term “advance fee” means any fee, commission, or other valuable consideration contracted for, claimed, demanded, charged, received, or collected prior to the listing, advertisement, or offer to sell or lease real estate, paid or offered to be paid for the purpose of promoting the sale or lease of real estate, or for referral to any real estate broker, salesperson, or both, other than by newspaper of general circulation.

(1A) The term “associate broker” means any person licensed under the chapter as a broker, who is employed by a real estate broker, franchise firm, association, business, or corporation, but who is not a partner, an officer, or principal broker within a licensed legal entity.

(2) Repealed.

(3) Repealed.

(4) The term “Commission” means the Real Estate Commission of the District of Columbia as established in § 45-1923(a).

(5) The term “Council” means the Council of the District of Columbia.

(6) The term “District” means the District of Columbia.

(6A) The term “escrow funds” means earnest money deposits for purchase of residential and commercial property and security deposits for rental of residential and commercial property.

(7) The term “Fund” means the Real Estate Guaranty and Education Fund established by § 45-1948.

(7A) The term “material fact” means information that, if known, would be likely to induce a reasonable person to enter into or not enter into or consummate a real estate transaction.

(8) The term "Mayor" means the Mayor of the District of Columbia or the Mayor's authorized representative.

(9) The term "person" means any individual, partnership, association, unincorporated business, firm, business trust, or corporation.

(10) The term "property manager" means an agent for the owner of real estate in all matters pertaining to property management as defined in this chapter, which are under his or her direction, and who is paid a commission, fee, or other valuable consideration for his or her services. A property manager may employ resident managers. The property manager shall be held accountable for the day-to-day job-related activities of the property manager's employees. The property manager may not perform any of the activities set forth in paragraphs (12) and (13) of this section that relate to listing for sale, offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, or negotiating a loan on real estate for a fee, commission, or other valuable consideration.

(10A) The term "principal real estate broker" means any person licensed under this chapter as a broker who is held accountable for the day-to-day operation of the real estate firm, association, partnership, or corporation.

(10B) The term "property management" means leasing, renting or offering to lease or rent, managing, marketing, and the overall operation and maintenance of real estate. The term "property management" includes the physical, administrative, and fiscal management of any real property serviced by a licensee, or his or her employee or agent.

(10C) The term "psychological impact" means any fact or suspicion with respect to circumstances, other than the physical condition of the property, that creates a fear, belief, or mental condition.

(11) The term "real estate" means condominiums, leaseholds, time sharing and any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether located in the District or elsewhere. The term "real estate" includes any share or membership in a cooperative organized pursuant to Chapter 11 of Title 29, to engage in activities relating to real estate, even though the shares or membership may be deemed to be securities or personal property for purposes of such chapter.

(12) The term "real estate broker" means any person, firm, association, partnership, or corporation (domestic or foreign) which:

(A) For a fee, commission, or other valuable consideration, lists for sale, or sells, exchanges, purchases, rents, or leases real property. A real estate broker may collect or offer to collect rent or income for the use of real estate, or negotiate a loan secured by a mortgage, deed of trust, or other encumbrance upon the transfer of real estate. A real estate broker may also engage in the business of erecting housing for sale and may sell or offer to sell that housing, or who as owner may sell or, through solicitation or advertising, offer to sell or negotiate the sale of any lot in any subdivision of land comprising 5 lots or more. This definition shall not apply to the sale of space for the advertising of real estate in any newspaper, magazine, or other publication; and

(B) May employ real estate brokers, associate real estate brokers, real estate salespersons, property managers and resident managers. The real

estate broker shall be held accountable for the day-to-day job-related activities of his or her employees. These activities include, but are not limited to, property management, leasing or renting of property, listing for sale, buying or negotiating the purchase or sale, or exchanging real estate or negotiating a loan on real property.

(12A) The term "real estate franchise" means any real estate franchise brokerage firm practicing in the District which does not own or operate individual offices directly, but licenses its trade name, reputation, operation procedure, and referral services to independently owned and operated brokerage firms.

(13) The term "real estate salesperson" means any person employed by a licensed real estate broker to manage or lease; rent or offer to lease or rent; list for sale, sell, or offer for sale; buy or offer to buy; negotiate the purchase or sale, or exchange of real estate; or to negotiate a loan on real estate.

(13A) The term "resident manager" means a person responsible for the day-to-day management of a contiguous cluster of rental property who serves as the principal on-site representative of the owner or licensee.

(14) The term "written listing contract" means a contract between a broker and an owner in which the owner grants to the broker the right to find a purchaser for a designated property at the price and terms the owner agrees to accept, and the broker, for a fee, commission, or other valuable consideration, promises to make a reasonable effort to obtain a purchaser for the term of the contract. (Mar. 10, 1983, D.C. Law 4-209, § 3, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(b), 31 DCR 4023; Mar. 6, 1991, D.C. Law 8-209, § 2(a), 37 DCR 8464; Feb. 5, 1994, D.C. Law 10-68, § 38(a), 40 DCR 6311.)

**Section references.** — This section is referred to in §§ 1-349, 45-1926, 45-1931, 45-1932.1, and 47-1441.

**Effect of amendments.** — D.C. Law 10-68 redesignated (1a), (6a), (10a), (10b), (12a) and (13a) as (1A), (6A), (10A), (10B), (12A), and (13A); and added "The term" at the beginning of (7A) and (10C) and validated previously made changes in the designation of those provisions.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Legislative history of Law 8-209.** — Law 8-209, the "Real Estate Transaction Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-514, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 13, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-284 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Real estate broker.** — Party acted as a real estate broker because he had participated in negotiations on client's behalf in an effort to secure a lease, and met with various officials with the intent to persuade and convince. RDP Dev. Corp. v. Schwartz, App. D.C., 657 A.2d 301 (1995).

**Cited** in Kassatly v. Yazbeck, 739 F. Supp. 651 (D.D.C. 1990); Spicer v. District of Columbia Real Estate Comm'n, App. D.C., 636 A.2d 415 (1993).

**§ 45-1923. Real Estate Commission of the District of Columbia.**

(a)(1) There is established a Real Estate Commission of the District of Columbia which shall consist of 7 members. The Mayor shall appoint 7 members of the Commission, with the advice and consent of the Council, each of whom, at the time of appointment, shall have been a resident of the District for a period of 1 year immediately preceding appointment. Each member shall maintain residency in the District while serving as a member of the Commission.

(2)(A) Two of the Commission members shall be licensed in the District as real estate brokers and shall have been actively engaged in the real estate business for not less than 5 years immediately preceding their appointment and while serving with the Commission.

(B) One Commission member shall represent the interests of real estate consumers and shall not have been actively engaged in or been closely connected to the business or vocation of real estate within the 5 years immediately preceding his or her appointment, or while serving on the Commission.

(C) One Commission member shall be licensed in the District as a real estate salesperson and shall have been actually engaged in the selling, purchasing, leasing, renting, or exchanging of real estate property for not less than 5 years immediately preceding his or her appointment, and while serving with the Commission.

(D) One Commission member shall be licensed in the District as a certified property manager and have been actually engaged in the property management business for not less than 5 years immediately preceding his or her appointment, and while serving with the Commission.

(E) One Commission member shall be an attorney who has been actively engaged in the practice of law in the District for not less than 1 year immediately preceding his or her appointment.

(F) One Commission member shall be an employee of the District government and shall serve at the pleasure of the Mayor.

(3) The Mayor shall appoint 1 member of the Commission to serve as chairperson of the Commission. The chairperson shall appoint 1 member of the Commission to serve as chairperson during the chairperson's absence.

(b) Persons who are members of the existing Real Estate Commission, as established by Reorganization Order No. 59, dated June 30, 1953, on March 10, 1983 shall continue to serve until the members of the Commission established by this chapter are appointed. Commission members appointed under this chapter shall serve until their successors are appointed and qualified.

(c) The Mayor is the continuation of the predecessor Real Estate Commission. Any pending matters not disposed of by the predecessor Real Estate Commission shall be deemed of a continuing nature and may be disposed of by the Commission.

(d)(1) The members first appointed under this chapter shall serve the following terms:

(A) The consumer member and 1 real estate broker member designated by the Mayor shall serve through February 27, 1987;

(B) The attorney member and 1 real estate broker member designated by the Mayor shall serve through February 27, 1987; and

(C) The business chance broker member and the property manager member shall serve through February 27, 1986. Upon the expiration of this term, the business chance broker member will be replaced by a real estate salesperson member pursuant to subsection (a) of this section.

(2) Thereafter, terms shall be 3 years and shall begin regularly on February 28, upon the expiration of a prior term, irrespective of the date of appointment or confirmation.

(3) Members shall serve until their successors have been appointed and have qualified.

(4) A vacancy shall be filled in the same manner as the original appointment, except that the business chance broker member of the first Commission appointed under this chapter shall be replaced by a real estate salesperson member as provided in subparagraph (C) of paragraph (1) of this subsection.

(5) An appointment to fill a vacancy occurring prior to the expiration of a term shall be filled only for the remainder of the term.

(6) No member may be appointed for more than 2 successive 3-year terms, except that the members appointed to a 4-year term under subparagraph (A) of paragraph (1) of this subsection may be reappointed for 1 successive 3-year term.

(7) The Mayor may remove members at any time for failure to maintain the qualifications specified in subsection (a) of this section, for neglect of duties required by this chapter, or for incompetency.

(8) Four members shall constitute a quorum for meetings of the Commission. The action of a majority of the members present at a meeting where a quorum exists shall be deemed to be the action of the Commission.

(e) The District government member of the Commission shall not be entitled to additional compensation for duties performed as a member of the Commission. (Mar. 10, 1983, D.C. Law 4-209, § 4, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(c), 31 DCR 4023.)

**Cross references.** — As to authority of Mayor to determine and pay honorariums to various board members and commissioners, see §§ 1-348 to 1-353.

As to effective date of D.C. Law 2-139, see § 1-637.1.

As to refund of fees and taxes, see § 47-1317.

As to refunds of fees when license refused, see § 47-1318.

**Section references.** — This section is referred to in §§ 1-349, 1-2502, 45-1922, and 47-1401.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

**Cited** in Vicki Bagley Realty, Inc. v. Laufer, App. D.C., 482 A.2d 359 (1984).

**§ 45-1924. Powers and duties of Mayor; evidentiary use of copies of Commission documents; record of Commission proceedings.**

(a) The Mayor shall maintain a register of all persons licensed under this chapter as real estate brokers, real estate salespersons, and property managers and shall publish at least annually a list of the names and addresses of those persons, and a list of all persons whose licenses have been suspended within 1 year prior to the publication or revoked within 3 years prior to the publication.

(b) The Mayor shall maintain a register of schools which are approved as affording adequate training in matters relating to real estate in accordance with this chapter.

(c) The Mayor may make studies, investigations, and obtain or require the furnishing of information under oath or affirmation, or otherwise, as the Mayor deems necessary to assist in the issuance of any rule or the issuance of any order under this chapter, or in the administration and enforcement of this chapter or any rule issued thereunder. For purposes of this section, the Mayor may administer oaths and affirmations, and require by subpoena or otherwise, the attendance and testimony of witnesses and the production of documents. In the event of contumacy or refusal to obey any subpoena or requirements under this subsection, the Mayor may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the Court shall issue any order that is proper and may punish any person who fails to obey an order of the court as a contempt thereof.

(d) Copies of all records and papers in the office of the Commission, duly certified and authenticated by the proper officer of the Commission, shall be received in evidence in all courts equally and with the same effect as the originals. The Commission shall keep a record of all its proceedings, including public hearings, authorized under this chapter.

(e) The Mayor may license, authorize, conduct, or assist in conducting or sponsoring, real estate institutes, seminars, and other educational programs and may incur and authorize the payment of necessary expenses in connection therewith, subject to the availability of appropriations for these purposes. The institutes, seminars, and educational programs shall be open to all licensees and applicants for licenses.

(f) The Mayor shall regulate the issuance of licenses, shall revoke or suspend licenses, shall censure licensees pursuant to this chapter.

(g) The Mayor shall issue rules to implement the provisions of this chapter and may delegate this authority to the Commission.

(h) The Mayor may grant reciprocity to any applicant currently licensed in good standing as a real estate broker or real estate salesperson in a state or territory of the United States where the requirements for licensure are substantially equal to or exceed those in effect in the District and which state or territory admits real estate brokers and real estate salespersons licensed by the District in a like manner.

(i) The Mayor is authorized to waive the examination requirement of this chapter if the applicant is licensed by a state or territory of the United States

with standards which are substantially equivalent at the date of licensure to the requirements of this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 5, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(d), 31 DCR 4023.)

**Cross references.** — As to authority of Mayor to increase or decrease fees specified in section, see §§ 1-346 and 1-347.

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## **§ 45-1925. Fees.**

The Mayor may, after public hearing, establish the fees required for licensure and establish other fees and charges for services rendered by the Commission or the District government in connection with this chapter, in the amounts as may, in the judgment of the Mayor be reasonably necessary to defray the approximate cost of administering this chapter or rendering the required services. Any proposed action with respect to the establishment or modification of the fees or charges shall be submitted to the Commission for review and comments at least 30 days prior to the action taking effect. The Mayor may delegate his or her authority under this section to the Commission. (Mar. 10, 1983, D.C. Law 4-209, § 6, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## **§ 45-1926. Licensure of real estate brokers, real estate salespersons, and property managers.**

(a) Except as otherwise provided in this chapter, it shall be unlawful for any person to engage in conduct, advertise, or hold himself or herself out as engaging in the business of a real estate broker, real estate salesperson, or property manager within the District, unless that person holds a valid license as a real estate broker, real estate salesperson, or property manager issued pursuant to this chapter.

(b)(1) For the purposes of this chapter, a person will be performing as a real estate broker if:

(A) The person accepts a fee, commission, or other valuable consideration for exchanging, buying, selling, renting, or leasing real estate or businesses;

(B) The person negotiates a loan secured by a mortgage, deed of trust, or other encumbrance on real property or a business; or

(C) The person is engaged in any activity specified by § 45-1922(12).

(2) Any person performing any of the activities described in paragraph (1) of this subsection for or on behalf of a real estate broker will be considered a real estate salesperson for the purposes of this chapter.

(c) No person engaged in or conducting the business, or acting in the capacity of a real estate broker, real estate salesperson, or property manager within the District shall bring or maintain any action in the courts of the District for the collection of compensation for any services performed in that capacity, or for the enforcement of any contract relating to real estate or business without alleging that he or she was duly licensed under this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 7, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(e), 31 DCR 4023.)

**Cross references.** — As to exemption from operation of money lenders license law, see § 26-710.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

**Section references.** — This section is referred to in § 1-349.

**Brokers and transactions not distinguished in terms of “business” or “real estate.”** — The District of Columbia does not distinguish between “business chance brokers” and “real estate brokers.” It does not require an analysis of whether a transaction was a “business opportunity” or a “real estate transaction.” Nor does it examine whether real property was a “substantial aspect” of the transaction. *Kassatly v. Yazbeck*, 739 F. Supp. 651 (D.D.C. 1990).

Under this section, a “business chance broker” is a “real estate broker” and is barred from bringing a lawsuit to collect a commission if the broker was not licensed at the time of the transaction. *Kassatly v. Yazbeck*, 739 F. Supp. 651 (D.D.C. 1990).

**Real estate broker.** — Party acted as a real estate broker because he had participated in negotiations on client’s behalf in an effort to secure a lease, and met with various officials with the intent to persuade and convince. *RDP Dev. Corp. v. Schwartz*, App. D.C., 657 A.2d 301 (1995).

**Unlicensed brokerage activity.** — The proscription against unlicensed brokerage activity does not apply only when the services provided included actual participation in the negotiation of the terms of a contract or lease. *RDP Dev. Corp. v. Schwartz*, App. D.C., 657 A.2d 301 (1995).

## § 45-1927. Qualifications for licensure.

(a) The Mayor shall, upon receipt of a properly completed application and the requisite fees, issue a license to serve as a real estate broker or real estate or business chance salesperson in the District to any person who:

- (1) Is 18 years of age or older;
- (2) Is able to read, write, and understand the English language;
- (3) Is a high school graduate or the holder of a high school equivalency certificate;
- (4) Has furnished the Mayor with a certificate that he or she has successfully completed a course of study prescribed by the Mayor at a school approved by the Mayor;
- (5) Has passed an examination or examinations given by or under direction of the Mayor or approved by the Mayor;
- (6) Has not had an application for a real estate or business chance license denied, for reasons other than failure to pass the required examination or examinations, in the District or elsewhere within 1 year prior to the date on which the application is filed;
- (7) Has not had a real estate or business chance license suspended in the District or elsewhere, which suspension is still in effect on the date on which the application is filed; and

(8) Has not had a real estate or business chance license revoked in the District or elsewhere within 3 years prior to the date on which his or her application is filed.

(b) In addition to the requirements specified in subsection (a) of this section, no real estate broker's license shall be issued to any person who has not been licensed and actively engaged in business as a real estate broker or salesperson in the District or elsewhere the 2 years immediately preceding the date on which the application for a real estate broker license is filed, unless the person furnishes proof of equivalent experience acceptable to the Mayor.

(c) Repealed.

(d) After January 1, 1983, the Mayor may require each licensee, as a condition for renewal of his or her license, to furnish the Commission with a certificate that he or she has successfully completed such continuing education courses as the Commission may, with the prior approval of the Mayor, prescribe at a school approved by the Mayor.

(e) In the event that an applicant for licensure presents satisfactory evidence that he or she has acquired, from experience or other sources, the educational requirements prescribed pursuant to subsection (a)(4) of this section, the Mayor may waive the educational requirements, in whole or in part.

(f) The Mayor may provide by rule for the classification of associate broker. (Mar. 10, 1983, D.C. Law 4-209, § 8, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(f), 31 DCR 4023.)

**Section references.** — This section is referred to in §§ 1-349 and 45-1928.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## **§ 45-1928. Status of person previously licensed.**

(a) Notwithstanding the provisions of § 45-1927, any person who, on March 10, 1983, holds a valid broker's license issued by the District shall be deemed to be licensed and shall be entitled to retain that status so long as he or she complies with the provisions of this chapter including the requirements for license renewal.

(b) Notwithstanding the provisions of § 45-1927, any person who, on March 10, 1983, holds a valid real estate salesperson's license issued by the District shall be deemed to be a real estate salesperson licensed under this chapter and shall be entitled to retain such status so long as he or she complies with the provisions of this chapter, including the requirements for license renewal. (Mar. 10, 1983, D.C. Law 4-209, § 9, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(g), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

## § 45-1929. Licensure required for property managers.

Except as provided in this chapter, it shall be unlawful for any person, directly or indirectly, to engage in, conduct, advertise, or hold himself or herself out as engaging in or conducting the business of property management within the District, unless that person holds a valid license issued by the Mayor. (Mar. 10, 1983, D.C. Law 4-209, § 10, 30 DCR 390.)

**Section references.** — This section is referred to in §§ 1-349 and 47-1446.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1929.1. Registration and certification required for resident managers.

(a) It shall be unlawful for anyone to work as a resident manager within the District unless that person is employed and registered by a property manager, real estate broker, firm, franchise, association, partnership, or corporation licensed under this chapter, and holds a valid certificate.

(b) On a biennial basis, all resident managers must be registered by their employer with the Mayor; the Mayor will certify each registered resident manager.

(c)(1) Whenever a resident manager is discharged by or terminates his employment with a property manager, real estate broker, firm, franchise, association, partnership, or corporation, the resident manager must immediately notify the Mayor in writing and return his or her certificate within 15 days.

(2) A new certificate shall be issued to a resident manager upon his or her employment by a licensee and the licensee's registration of the manager with the Mayor.

(d) Whenever a licensee terminates the employment of a resident manager, the licensee must notify the Mayor in writing within 15 days.

(e) The licensee shall be held accountable for the day-to-day job-related activities of the resident manager. The day-to-day activities of resident managers shall not include renting or leasing property. (Mar. 10, 1983, D.C. Law 4-209, § 10a, as added Sept. 26, 1984, D.C. Law 5-117, § 2(h), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 5-117.** — Law 5-117, the "District of Columbia Real Estate Licensure Act of 1982 Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-175, which was referred to the Committee

on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-169 and transmitted to both Houses of Congress for its review.

**§ 45-1930. Qualifications for licensure of property managers.**

- (a) The Mayor shall, upon receipt of a properly completed application and the requisite fees, issue a property manager's license to any person who:
- (1) Is 18 years of age or older;
  - (2) Is able to read, write, and understand the English language;
  - (3) Has passed an examination or examinations given by or under the direction of the Mayor;
  - (4) Is a high school graduate or the holder of a high school equivalency certificate;
  - (5) Has not had an application for a property manager's license denied, for reasons other than failure to pass the required examination or examinations, in the District or elsewhere within 1 year prior to the date on which the application is filed;
  - (6) Has not had a property manager's license suspended in the District or elsewhere which suspension is still in effect on the date on which the application is filed; and
  - (7) Has not had a property manager's license revoked in the District or elsewhere within 3 years prior to the date on which his or her application is filed.
- (b) After January 1, 1983, the Mayor may require each property manager, as a condition for renewal of his or her license, to furnish the Mayor with a certificate that he or she has successfully completed such continuing education courses as the Mayor may prescribe at a school approved by the Mayor.
- (c) Within 1 year from March 10, 1983, the Mayor shall waive the examination and education requirements and grant a license to any competent applicant who is living or working in the District, who has been actively engaged in the practice of property management for a period of 4 years immediately preceding application, and who presents proof of that practice to the Mayor in a manner prescribed by the Mayor.
- (d) Repealed.
- (e) Persons licensed as real estate brokers in the District are deemed to have satisfied the educational and examination requirements for licensure as property managers, but shall be required to satisfy all other requirements as set forth in this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 11, 30 DCR 390; Apr. 30, 1988, D.C. Law 7-104, § 45, 35 DCR 147.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on Nov. 24, 1987, and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

### § 45-1930.1. Waiver of examination and education requirements for property managers.

The Mayor shall waive the examination and education requirements and grant a license to any applicant who has been engaged in the practice of property management in the District 4 years immediately preceding the application. The applicant must present proof of his or her practice in a manner prescribed by the Mayor. This waiver provision will remain in effect until 90 days after the effective date of the rules and regulations implementing the District of Columbia Real Estate Licensure Act of 1982 Amendments Act of 1984. (Mar. 10, 1983, D.C. Law 4-209, § 11a, as added Sept. 26, 1984, D.C. Law 5-117, § 2(i), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**References in text.** — The “District of Columbia Real Estate Licensure Act of 1982 Amendments Act of 1984”, referred to at the end of the third sentence, is D.C. Law 5-117.

### § 45-1931. Exemptions.

Except as otherwise provided in this chapter, nothing contained in this chapter shall be construed to apply to:

(1)(A) Receivers, referees, administrators, executors, guardians, conservators, trustees, or other persons appointed or acting under the judgment or order of any court while acting in that capacity, or attorneys-at-law in the ordinary practice of their profession;

(B) Those persons enumerated in subparagraph (A) of this paragraph shall not be regularly engaged in the real estate business and shall not hold themselves out as real estate brokers, salespersons or property managers;

(2) Any person who, as an owner or lessor of real estate, shall perform any of the acts specified in § 45-1922(10), (12) or (13), where the acts are performed in the regular course of, or as an incident to, the management of real estate, business and the investments therein owned by that person;

(3) Any trustee or auctioneer acting under authority of a power of sale in a mortgage, deed of trust, or similar instrument securing the payment of a bona fide debt;

(4) Except for title companies, any bank, trust company, building and loan or savings and loan association, or insurance company, having a fiduciary interest such as a receiver, referee, administrator, executor, guardian, conservator or trustee, when the bank, trust company, building and loan or savings and loan association, or insurance company is so engaged;

(5) Any person who is employed by a licensed real estate broker, or property manager in a solely stenographic or clerical capacity and who does not perform, offer, agree, or attempt to perform, any of the activities specified in § 45-1922(12) or (13);

(6) Any officer or employee of the United States or District government while performing his or her official duties, or any person, or employee thereof, who is employed on a contractual or other basis, by the United States or

District government to make appraisals of real estate for real property tax or other government purposes;

(7) Any person who, for a fee, commission, or other valuable consideration, identifies for another person, or provides any other information about, any rental unit available for rent; or

(8) Any qualifying nonprofit housing organization as defined by § 47-3505(a). (Mar. 10, 1983, D.C. Law 4-209, § 12, 30 DCR 390; Oct. 8, 1983, D.C. Law 5-31, § 10(d), 30 DCR 3879; Sept. 26, 1984, D.C. Law 5-117, § 2(j), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-31.** — Law 5-31, the “Lower Income Homeownership Tax Abatement and Incentives Act of 1983,” was introduced in Council and assigned Bill No. 5-167, which was referred to the Committee on

Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1983, and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-53 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

## **§ 45-1932. Transfer of license; change of status; brokerage firms.**

(a) A license issued to an individual shall not be transferred to another individual.

(b) An individual licensed as a real estate broker may, upon written request to the Mayor, change his or her status from that of an individual real estate broker to that of a member, partner, trustee, or officer of a firm, franchise, partnership, association, or corporation, or to that of an associate real estate broker with a corporation, for any unexpired portion of his or her licensure term, upon the payment of the requisite fees required pursuant to this chapter.

(c) Any broker who wishes to change his or her status to that of an associate real estate broker shall notify the Commission by certified mail. (Mar. 10, 1983, D.C. Law 4-209, § 13, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(k), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

### **§ 45-1932.1. Licensure of legal entities.**

No real estate broker's license shall be issued to any firm, franchise, partnership, association, or corporation unless the Commission finds that:

(1) The applicant is organized and exists pursuant to applicable District and federal laws;

(2) Every individual member, partner, trustee, or officer who is engaged in activities defined in § 45-1922 (12) is licensed under this chapter;

(3) Every employee who will render professional services holds a valid license or certificate issued by the Commission; and

(4) Every branch office is managed by a licensed real estate broker. (Mar. 10, 1983, D.C. Law 4-209, § 13a, as added Sept. 26, 1984, D.C. Law 5-117, § 2(l), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

### **§ 45-1933. Place of business.**

(a) If a real estate broker maintains more than 1 place of business within the District, a duplicate license shall be issued to the broker for each office maintained upon payment of the required fee. A copy of the license must be posted within each office maintained by the real estate broker.

(b) Whenever a real estate broker changes the location of his or her principal place of business, or discontinues his or her business, he or she shall notify the Mayor within 15 days of the event, in writing, and return to the Mayor his or her license together with the licenses of all real estate salespersons employed by him or her. The Mayor shall issue a new license to the broker upon payment of the required fee. A salesperson shall be issued a new license upon reemployment and payment of the required fees.

(c) Failure to notify the Mayor or return the license as required by this section will result in immediate cancellation of the license until compliance with the provisions of this section.

(d) New licenses for the unexpired term may be issued by the Mayor upon written request by the applicant and the payment of the fees required pursuant to this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 14, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(m), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

### **§ 45-1934. Prohibited names.**

The Mayor may refuse to issue, renew, or transfer a license in a name that:

- (1) Is misleading or would constitute false advertising;
- (2) Implies a partnership, association, or corporation when a partnership, association, or corporation does not exist;
- (3) Includes the name of a salesperson;
- (4) Is in violation of law;
- (5) Is a name which has been used by any person whose license has been suspended;
- (6) Includes the name of a person not otherwise licensed; or
- (7) Is a name which is deceptively similar to a name used by any other licensee. (Mar. 10, 1983, D.C. Law 4-209, § 15, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(n), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

## **§ 45-1935. Injunctions.**

Whenever, in the judgment of the Mayor, any person has engaged in, is engaging in, or is about to engage in any act or practice which constitutes a violation of any provision of this chapter or the rules issued pursuant to this chapter, the Mayor may request the Corporation Counsel of the District to make application to the Superior Court of the District of Columbia for an order restraining or enjoining the act or practice, and, upon a showing by the Mayor that the person has engaged in, is engaging in, or is about to engage in any unlawful act or practice, a restraining order, injunction, or other order as may be appropriate shall be granted by the Court, without bond. (Mar. 10, 1983, D.C. Law 4-209, § 16, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## **§ 45-1936. Investigation of conduct; suspension or revocation of license; grounds; penalty in lieu of suspension; probationary period; reinstatement.**

(a)(1) The Mayor may, upon his or her initiative, or upon receipt of a verified written complaint, investigate any conduct in violation of this chapter by any real estate broker or real estate salesperson.

(2) The complaint referred to in paragraph (1) of this subsection, or that complaint together with evidence, documentary, or otherwise, presented in connection therewith, shall make out a *prima facie* case.

(b) Subject to Chapter 15 of Title 1, the Mayor shall have the power to suspend, revoke, or refuse to renew, transfer, or restore any license issued under the provisions of this chapter, or, in lieu of or in addition to any suspension or revocation, impose a penalty of not more than \$1,000 per violation whenever the licensee has, by false or fraudulent representation, obtained a license under this chapter, or where the licensee, in performing or attempting to perform any of the acts specified in this chapter, has:

(1) Made any substantial misrepresentation;  
(2) Made any false promise of a character likely to influence, persuade, or induce;

(3) Pursued a continued and flagrant course of misrepresentation, or made false promises through agents or salespersons, or advertisement or otherwise;

(4) Acted for more than 1 party in a transaction without the knowledge of all parties for whom he or she acted;

(5) Accepted a fee, commission, or other valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter from any person, except the broker under whose name he or she is or was licensed at the time the fee, commission, or other valuable consideration was earned;

(6) Represented or attempted to represent any real estate broker, other than the broker under whose name he or she is licensed, as a real estate salesperson without the express knowledge and written consent of the broker under whose name he or she is licensed;

(7) Placed on advertisement in any publication, or used a sign or business card which was misleading or which constituted false advertising;

(8) Failed, within a reasonable time, to account for or to remit any money, valuable document, or other property coming into his or her possession which belongs to others;

(9) Demonstrated unworthiness or incompetency to act as a real estate broker and real estate salesperson so as to endanger the public interest;

(10) While acting or attempting to act as agent or broker, purchased or attempted to purchase any business or real estate for himself or herself, either in his or her own name or by use of a straw party, without disclosing that fact to the party he or she represents;

(11) Been guilty of any other conduct, whether of the same or of a different character from that herein specified, which constituted fraudulent or dishonest dealing;

(12) Used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(13) Disregarded or violated any provision of this chapter, the rules issued pursuant to this chapter, or the code of ethics adopted pursuant to this chapter;

(14) Guaranteed, authorized, or permitted any broker or salesperson to guarantee future profits which may result from the resale of real estate or a business or business opportunity, or the goodwill of any existing business;

(15) Offered any property or business for sale or rent or placed a sign on any real estate offering it for sale or for rent without the written consent of the owner or his or her authorized agent;

(16) Made or accepted a listing contract to sell real estate or a business unless the contract is in writing and provides for a definite termination date which is not subject to prior notice from either party;

(17) Failed to furnish a copy of any listing, sale, lease, or other contract relevant to a real estate or business transaction to all signatories thereof at the time of execution;

(18) Accepted compensation from more than 1 party to a transaction without the knowledge and consent of all other parties to the transaction;

(19) Failed to keep an escrow or trustee accounting of funds deposited with him or her relating to real estate and business transactions, and to maintain records for a period of 3 years, showing to whom the money belongs, the date of deposit, the date of withdrawal, to whom paid, and other pertinent information as the Commission may require by regulation; the records to be made available to the Commission on demand or upon written notice given to the depository;

(20) Commingled escrow or trustee funds held by the licensee with his or her personal funds, other than a nominal amount necessary to keep active the escrow or trustee account;

(21) Induced any party to a written agreement in a real estate or business sales transaction to break the agreement for the purpose of substituting a new agreement where the substitution is motivated by the personal gain of the concerned licensee;

(22) Failed to advise the Commission in writing within 15 days of the entry of any judgment against the licensee in a civil or criminal proceeding by a court of competent jurisdiction;

(23) Failed, as a broker, to return immediately to the Commission the license of a salesperson employed by the broker, wherein the salesperson has been discharged or has terminated his or her employment or affiliation with the broker;

(24) Failed, as a salesperson, to place in the custody of the employing broker, as soon after receipt as is practicable, all money, valuable documents, or other property entrusted to him or her by any person dealing with him or her as the representative of the broker;

(25) Accepted, offered, agreed, or attempted to accept, employment for a fee, commission, or other valuable consideration for appraising real estate or a business, contingent upon the reporting of a predetermined value;

(26) Issued an appraisal report on real estate or a business in which the licensee has an undisclosed interest;

(27) Violated, as determined by the Mayor or a court of competent jurisdiction, any provision of Chapter 14 of Title 47 or the rules issued pursuant to that chapter;

(28) Violated, as determined by the District of Columbia Commission on Human Rights, as established by Commissioner's Order No. 71-224, effective July 8, 1971, the Mayor, or a court of competent jurisdiction, any provision of Chapter 25 of Title 1 or the rules issued pursuant to that chapter, or failed to comply with an order of the District of Columbia Commission on Human Rights, as established by Commissioner's Order No. 71-224, effective July 8, 1971, pursuant to that chapter;

(29) Violated, as determined by the Department of Consumer and Regulatory Affairs, established by the Reorganization Plan No. 1 of 1983, effective March 31, 1983, the Mayor, or a court of competent jurisdiction, any provision of Chapter 39 of Title 28, or the rules issued pursuant to that chapter, or failed to comply with an order of the Department of Consumer and Regulatory Affairs or its administrative law judge; or

(30) Made any oral or written representations, after or prior to conveyance, to a prospective buyer of a business or residential real estate that repairs, renovations, improvements, installations, or additions will be made to the business or real estate after the conveyance, or continued to act on behalf of a seller who made those representations, unless all the representations are furnished in writing to the buyer at least 5 days prior to the conveyance.

(c)(1) When the Mayor, in his or her discretion, determines that the public interest would be best served by the continued licensure of any person, the

Mayor may, with the consent of the licensee, impose a penalty as provided for in subsection (b) of this section in lieu of suspension.

(2) The licensee shall execute a written waiver of appeal and judicial review and pay the penalty imposed by the Mayor within the time directed by the Mayor. Failure to pay the penalty within the time directed by the Mayor shall result in automatic suspension of the person's license. All penalties collected pursuant to this section shall be deposited with the D.C. Treasurer and shall be credited to the General Fund.

(d) The execution of a penalty or suspension may be stayed by the Mayor, and the licensee placed on probation for the suspension period, after satisfactory completion of which his or her license shall be fully reinstated. Any violation of this chapter or the rules issued pursuant to this chapter by the licensee during the period of probation shall result in immediate suspension.

(e) The Mayor shall establish procedures governing the reinstatement of revoked or suspended licenses within 6 months from March 10, 1983.

(f)(1) Notwithstanding the possibility that a fact may have a psychological impact on a purchaser, lessee, or sublessee, it shall not be a material fact that must be disclosed in a real estate transaction that:

(A) An occupant of real property, at any time, was infected or was or is suspected to have been infected with a human immune deficiency virus;

(B) An occupant of real property, at any time, has been diagnosed, was infected, or was suspected to have been diagnosed as having acquired immune deficiency syndrome or any other disease that has been determined by medical evidence to be highly unlikely to be transmitted through occupancy of property alone; or

(C) The property, at any time, has been or was suspected to have been the site of a suicide, homicide, or other felony.

(2) A cause of action shall not arise against an owner of real property, a real estate broker, a real estate salesperson, a property manager, a lessee, or sublessee for the failure to disclose to the purchaser, lessee, or sublessee that the real property was the site of any circumstances described in paragraph (1) of this subsection. (Mar. 10, 1983, D.C. Law 4-209, § 17, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(o), 31 DCR 4023; Mar. 14, 1985, D.C. Law 5-159, § 8, 32 DCR 30; Mar. 6, 1991, D.C. Law 8-209, § 2(b), 37 DCR 8464; Feb. 5, 1994, D.C. Law 10-68, § 38(b), 40 DCR 6311.)

**Cross references.** — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

**Section references.** — This section is referred to in §§ 1-349 and 47-1447.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Legislative history of Law 5-159.** — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-209.** — See note to § 45-1922.

**Legislative history of Law 10-68.** — See note to § 45-1922.

**Editor's notes.** — As enacted by D.C. Law 4-209, the reference in subsection (c)(1) was originally to "subsection (a) of this section". The correct reference "subsection (b) of this section" has been editorially substituted.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

**Revocation of license upheld.** — Petitioner who entered a plea of guilty in the United States District Court for the District of Columbia to one count of interstate transportation of property obtained by fraud, in violation of 18 U.S.C. § 2314 (1988), due to his participation in numerous fraudulent real estate transactions in which he allegedly devised and intended to defraud the United States Department of Housing and Urban Development and the Federal Housing Administration, properly had his real estate broker's license revoked. *Spicer v. District of Columbia Real Estate Comm'n*, App. D.C., 636 A.2d 415 (1993).

The District of Columbia Real Estate Commission's order revoking petitioner's license for five years from the date of the order was a

reasonable exercise of discretion, reflecting the Commission's recognition that the five-year statutory waiting period prescribed by § 45-1942 may also be imposed as an appropriate sanction for a post-revocation license application. *Spicer v. District of Columbia Real Estate Comm'n*, App. D.C., 636 A.2d 415 (1993).

**Commission's discretion.** — This section gives the District of Columbia Real Estate Commission broad discretion to fashion remedies for violations of the District of Columbia Real Estate Licensure Act of 1982, and in the absence of an abuse of this discretion, the Court of Appeals will not disturb the agency's decision. *Spicer v. District of Columbia Real Estate Comm'n*, App. D.C., 636 A.2d 415 (1993).

Cited in *Vicki Bagley Realty, Inc. v. Laufer*, App. D.C., 482 A.2d 359 (1984); *Regional Redevelopment Corp. v. Hoke*, App. D.C., 547 A.2d 1006 (1988).

## § 45-1937. Escrow accounts.

(a) In any real estate transaction in which any person is entrusted, receives, and accepts, or otherwise holds or deposits monies or other trust instruments, of whatever kind or nature, pending consummation or termination of the transaction involved, whether or not the person is required to be licensed under this chapter, the monies, in the absence of written instructions to the contrary signed by all parties to the transaction, shall be:

(1) Deposited within 7 days in an account in a financial institution located within the District whose deposits are insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or their successors;

(2) Maintained by the escrow holder or trustee as a separate account for monies belonging to others; and

(3)(A) Retained in an account until the transaction involved is consummated or terminated, or until proper written instructions have been received by the escrow holder or trustee directing the withdrawal and disposition of the monies, at which time, all the monies shall be promptly and fully accounted for by the escrow holder or trustee. In no event shall any escrow holder or trustee commingle any of the monies with his or her own funds or use any of the monies for any purpose other than the purpose for which the monies were entrusted to him or her.

(B) The escrow holder or trustee may keep a nominal amount of his or her personal funds in an escrow or trustee account for the purpose of keeping active the escrow or trustee account.

(b)(1) Each escrow holder or trustee shall notify the Commission within 14 calendar days of the name and post office address of the financial institution in which an escrow or trust account has been established and also the name and number of the account.

(2) All escrow holders or trustees shall notify the Commission of all escrow in trust accounts existing on March 10, 1983, and within 30 calendar days after March 10, 1983.

(c) Each escrow holder or trustee shall give written authorization to the Commission to examine escrow or trust accounts maintained by him or her and shall permit the Commission to examine all books, records, and contracts relating to the escrow accounts. The examinations shall be made at any time the Commission may direct.

(d) An escrow holder or trustee shall not be entitled to any part of the earnest money or other money paid to, or held by, the escrow holder or trustee in connection with any real estate or business transaction as a part or all of his or her commission or fee or for any other purpose until the transaction has been consummated or terminated.

(e) If an escrow or trust is held for 90 days or more, it shall earn interest from the 91st day to the date the transaction is consummated or terminated, at the highest of the following interest rates:

(1) The legal maximum rate under federal law for interest on ordinary savings deposits in commercial banks;

(2) The rate on the account in which the escrow is deposited; or

(3) The rate on the certificate of deposit or other security given as the escrow or trust.

(f) A service fee of not more than \$15 may be subtracted from the interest by the financial institution into which the escrow or trust funds are deposited.

(g) Nothing in this section shall be interpreted to supersede the Security Deposit Act (D.C. Law 1-48; 22 DCR 2825). (Mar. 10, 1983, D.C. Law 4-209, § 18, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(p), 31 DCR 4023.)

**Cross references.** — As to security deposit regulations, see 14 DC MR §§ 308 to 311.

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**References in text.** — The Federal Savings and Loan Insurance Corporation, referred to in

(a)(1), has been abolished. For provisions relating to the abolition of the Federal Savings and Loan Insurance Corporation and the transfer of functions, personnel and property of that agency, see §§ 401 to 406 of Pub. L. 101-73, set out as a note under 12 U.S.C. § 1437.

**Cited** in Family Fed. Sav. & Loan v. Davis, 172 Bankr. 437 (Bankr. D.D.C. 1994).

## § 45-1938. Procedural requirements.

(a) Before refusing to issue a license on any grounds, other than the applicant's failure to pass a required examination or for a criminal conviction as provided for in § 45-1941, the Mayor shall notify the applicant in writing of the Mayor's intended action and of the grounds therefor. Before suspending, revoking, or refusing to renew, transfer, or restore a license on any grounds, other than for a criminal conviction as provided for in § 45-1941, or before imposing a penalty pursuant to § 45-1950, the Mayor shall notify the applicant or licensee in writing of its intended action and of the grounds therefor. The notice shall be served on the applicant or licensee by personal service or by mailing the notice to the address of record of the applicant or licensee.

(b) The notice to the applicant or licensee provided for in subsection (a) of this section shall be in the form of an order for a public hearing setting forth the time and place of the hearing, which time shall be no less than 30 days or

more than 60 days from the date of personal service or service by certified mail. The applicant or licensee shall have an opportunity to be heard in person or by counsel. The broker sponsoring an applicant for a salesperson license or a broker with whom a salesperson is affiliated or by whom the salesperson is employed, shall also be notified of the hearing by written notice sent by certified mail to the broker's address of record.

(c) The Mayor shall have the power to issue subpoenas for the taking of testimony by deposition or for attendance at public hearings in the same manner as prescribed by law in civil cases in the Superior Court of the District of Columbia. The Mayor shall have the power to require the production of books, records, papers, and documents by subpoena or otherwise. Any party to any hearing before the Mayor shall have the right to the attendance of witnesses in his or her behalf at the hearing upon written request therefor to the Mayor, designating the name and address of the person or persons to be subpoenaed.

(d) If the Mayor shall determine that an applicant is not qualified to be licensed, no license shall be issued, and if the Mayor shall determine that a licensee is guilty of a violation of any of the provisions of this chapter or is otherwise subject to suspension or revocation of his or her license, the license shall be suspended or revoked. All evidence before the Mayor, all findings of fact made by the Mayor, and questions of law involved in any final decision or determination of the Mayor shall be subject to review by the District of Columbia Court of Appeals in accordance with subchapter I of Chapter 15 of Title 1. Any party to the proceeding, upon written request, shall be furnished with a copy of the transcript of the proceedings upon the payment to the Mayor of a reasonable fee as the Mayor shall prescribe. (Mar. 10, 1983, D.C. Law 4-209, § 19, 30 DCR 390.)

**Cross references.** — As to jurisdiction of District of Columbia Court of Appeals to review final decision of Real Estate Commission, see § 11-722.

As to certified mail receipts being prima facie evidence of delivery, see § 14-506.

**Section references.** — This section is referred to in §§ 1-349 and 45-1944.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1939. Automatic suspension of license through affiliation; discharge or termination of employment or affiliation.

(a) Whenever a real estate broker's license has been suspended or revoked pursuant to this chapter, all real estate salespersons employed by that real estate broker must mail their licenses to the Mayor within 15 days of the revocation or suspension. It shall be unlawful for the real estate salesperson to perform any of the acts specified in this chapter from the date of revocation or suspension until he or she has been reemployed and a license has been reissued to him or her by the Mayor.

(b) When a real estate salesperson is discharged or terminates his or her employment with a licensee, the licensee, within 15 calendar days, shall mail notification to the former employee that his or her license has been mailed to the Mayor. A copy of the notice to the real estate salesperson shall accompany the license when it is mailed to the Mayor. It shall be unlawful for any real estate salesperson to perform any of the acts specified in this chapter, under authority of the license issued pursuant to this chapter, from the date of discharge or termination until the time he or she is employed by another licensee and a license is reissued to him or her by the Mayor.

(c) When a real estate salesperson is discharged by or terminates his employment with a licensee it shall be the duty of the real estate salesperson to notify the Mayor in writing within 15 days. It shall be unlawful for the real estate salesperson to perform any of the acts specified in this statute from the date of discharge or termination until he or she has been employed by another licensee and a license is reissued to him or her by the Mayor. (Mar. 10, 1983, D.C. Law 4-209, § 20, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(q), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1940. Prohibited acts.

(a) No person shall enter into or become a party to any contract, agreement, or understanding, or in any manner whatsoever consider, combine, conspire, or act with another or others:

(1) To execute a deed or other instrument conveying real estate or a business of any interest therein situated in the District that is not a bona fide sale or transfer, but which is instead a simulated sale or transfer of the real estate, business, or interest therein executed for the purpose and with the intent of defrauding others or misleading others as to the value of the business, real estate or interest therein, and which does so mislead or defraud others, to their detriment; or

(2) To execute a mortgage, deed of trust, or chattel mortgage upon any real estate, business, or interest therein situated in the District that does not represent security for a bona fide indebtedness, but which is a simulated transaction, executed for the purpose and with the intent of misleading or deceiving others as to the value of a business, real estate, or interest therein and which does mislead, deceive, or defraud others to their detriment.

(b) No person shall offer, give, award, promise, use any method, scheme or plan, offering, giving, awarding or promising, free lots in connection with the sale or the offering for sale, or attempt to sell or negotiate the sale of any real estate, business, or interest therein, wherever situated, for the purpose of attracting, inducing, persuading, or influencing a purchaser or prospective purchaser; or offer, promise, or give prizes of any name or nature for

attendance at or participation in any sale of any real estate, business, or interest therein, by auction or otherwise including an owner of the real estate, business, or interest therein.

(c) No person shall knowingly pay a fee, commission, or compensation to anyone for the performance of any service or act within the District defined in this chapter as the act of a real estate broker or real estate salesperson to any person who was not duly licensed at the time the service or act was performed. This subsection shall not apply to the payment of a referral fee by a real estate broker licensed under this chapter to a nonresident cooperating real estate broker who is properly licensed in his or her own jurisdiction.

(d) No person knowingly shall prepare, distribute, or circulate, or cause the preparation, distribution, or circulation of, any false or misleading advertising in connection with the sale, exchange, purchase, lease, or rental of real estate or business.

(e) No person shall assume or use the title or designation "real estate broker", or "real estate salesperson", the abbreviation "R.E.B." or "R.E.S.", or any other title designation, words, letters, abbreviations, sign, card, or device tending to indicate that the person is licensed as a real estate broker or real estate salesperson unless the person is licensed as provided for in this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 21, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(r), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

## **§ 45-1941. License suspended upon criminal conviction.**

Where during the term of any license issued by the Mayor, the licensee shall be convicted in a court of competent jurisdiction in the District or any state or territory of the United States, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, criminal conspiracy to defraud, or similar offense or offenses, or forfeits collateral or pleads guilty or nolo contendere to any offense, and a duly certified or exemplified copy of the record in the proceedings is filed with the Mayor, the Mayor shall suspend forthwith the license issued to the licensee so convicted and convene a revocation hearing within 30 days. (Mar. 10, 1983, D.C. Law 4-209, § 22, 30 DCR 390.)

**Section references.** — This section is referred to in §§ 1-349 and 45-1938.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

**Revocation of license upheld.** — Petitioner who entered a plea of guilty in the United States District Court for the District of Columbia to one count of interstate transporta-

tion of property obtained by fraud, in violation of 18 U.S.C. § 2314 (1988), due to his participation in numerous fraudulent real estate transactions in which he allegedly devised and intended to defraud the United States Department of Housing and Urban Development and the Federal Housing Administration, properly had his real estate broker's license revoked. *Spicer v. District of Columbia Real Estate Comm'n*, App. D.C., 636 A.2d 415 (1993).

## § 45-1942. Effect of criminal conviction upon license application.

No license shall be issued by the Mayor to any person who, within 5 years prior to the person's application for a license, has been convicted of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, criminal conspiracy to defraud, or similar offense or offenses, or who has forfeited collateral, or pleaded guilty or nolo contendere to any offense or offenses, or to any partnership of which the person is a member, or to any association or corporation of which the person is an officer, director, or employee or in which, as a stockholder, the person has or exercises a controlling interest, either directly or indirectly. (Mar. 10, 1983, D.C. Law 4-209, § 23, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law**

**4-209.** — See Mayor's Order 83-123, May 6, 1983.

**Cited** in Spicer v. District of Columbia Real Estate Comm'n, App. D.C., 636 A.2d 415 (1993).

## § 45-1943. Effect of license revocation or suspension upon partnership, association, or corporation.

In the event of the revocation or suspension of a license issued to a real estate firm, franchise, partnership, association, or corporation, the license issued to the principal real estate broker, or any member of a partnership or director or officer of an association or corporation, shall be summarily revoked or suspended by the Mayor, unless:

(1) If in a partnership, the connection with the member whose license has been revoked or suspended shall be severed within the time prescribed by the Mayor, and his or her share in the partnership's activities shall be terminated; or

(2) Wherein an association or corporation, the director or officer whose license has been revoked or suspended shall be discharged and shall have no further participation in the association's or corporation's activities. (Mar. 10, 1983, D.C. Law 4-209, § 24, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(s), 31 DCR 4023.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1944. Suspension or revocation of property manager license; code of ethics applicable to all licensees.

(a) Upon the Mayor's verified complaint, or upon a verified complaint in writing by any person (provided the complaint, or the complaint together with

evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case), the Mayor shall investigate the conduct of any property manager. Subject to the provisions of § 45-1938 and Chapter 15 of Title 1, the Mayor shall have the power to suspend, revoke, or refuse to renew, transfer, or restore any license issued under the provisions of this chapter, or in lieu of or in addition to any suspension or revocation, impose a penalty of not more than \$1,000 per violation, whenever the licensee has, by false or fraudulent representation, obtained a license under this chapter, or where the licensee, in performing or attempting to perform any of the acts specified in the chapter has:

- (1) Made any substantial misrepresentation;
- (2) Made any false promise of a character likely to influence, persuade, or induce;
- (3) Pursued a continued and flagrant course of misrepresentation, or made false promises through agents, advertising or otherwise;
- (4) Disclosed to a third party confidential information which would be injurious concerning the business or personal affairs of a client without prior written consent of the client, except as may be required or compelled by applicable law or rules;
- (5) Failed to maintain accurate accounting records concerning the property managed for the client and failed to keep the records available for inspection by each client;
- (6) Acted for more than 1 party in a transaction without the knowledge and consent of all parties for whom the property manager acts;
- (7) Placed an advertisement in any publication, or used a sign or business card, which was misleading or which constituted false advertising;
- (8) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into possession of the property manager which belongs to others;
- (9) Demonstrated such unworthiness or incompetency to act as a property manager as to endanger the public interest;
- (10) Been guilty of any conduct which constitutes fraudulent or dishonest dealings;
- (11) Used any trade name or insignia of membership in any property or real estate organization of which the property manager is not a member;
- (12) Disregarded or violated any provision of this chapter, the rules issued pursuant to this chapter, or the code of ethics adopted by the Mayor pursuant to this chapter;
- (13) Offered any property for rent or otherwise without the written consent of the owner or his or her authorized agent;
- (14) Made or accepted a contract to manage property of another, unless the contract is in writing;
- (15) Failed to furnish a copy of any lease or other contract relevant to a property management transaction to all signatories thereof at the time of execution;
- (16) Accepted compensation from more than 1 party to a transaction without the knowledge and consent of all parties to the transaction;

(17) Failed to keep an escrow or trustee accounting of funds deposited with the property manager relating to property management transactions, and to maintain records for a period of 3 years, showing to whom the money belongs, the date of deposit, the date of withdrawal, to whom paid, and the other pertinent information as the Mayor may require by rule, the records to be available to the Mayor on demand or upon written notice given to the depository;

(18) Commingled escrow or trustee funds held by the licensee with his or her personal funds, other than a nominal amount necessary to keep active the escrow or trustee account;

(19) Failed to advise the Mayor in writing within 15 days of the entry of any judgment against the licensee in a civil or criminal proceeding by a court of competent jurisdiction;

(20) Violated, as determined by the Mayor or a court of competent jurisdiction, any provision of Chapter 39 of Title 28, Chapter 15 of this title and Chapter 25 of Title 1, or any rules issued pursuant to those chapters;

(21) Refused or prevented, directly or indirectly, a prospective lessee inspection of residential real estate upon reasonable request and scheduling for inspections, for the purpose of reviewing, examining, or having third parties examine the real estate and the condition of its fixtures; or

(22) Made any oral or written representations, at or prior to conveyance to a prospective lessee of residential real estate that repairs, renovations, improvements, installation, or additions will be made to the property after the conveyance unless all the representations are furnished in writing to the lessee at or prior to the conveyance of the premises.

(b) Within 1 year after March 10, 1983, the Mayor shall formulate and adopt, after a public hearing, a code of ethics which shall be regarded as the standard of conduct required by the Mayor of all persons licensed under this chapter and shall be designed to protect the public interest. (Mar. 10, 1983, D.C. Law 4-209, § 25, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**References in text.** — Chapter 15 of this title, referred to in subsection (a)(20), terminated on April 30, 1985, pursuant to D.C. Law

3-131, § 907, except subchapter V of chapter 15, which was repealed July 17, 1985 by D.C. Law 6-10, § 905.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1945. Written listing contract required.

A written listing contract is required in the District for the sale of all real property. (Mar. 10, 1983, D.C. Law 4-209, § 26, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Payment of real estate commissions.** —

This section does not change the common law relating to the payment of real estate commissions. Cassidy & Pinkard, Inc. v. Jemal, 899 F. Supp. 5 (D.D.C. 1995).

## § 45-1946. Criminal penalties; prosecutions.

(a) Any person who violates any provision of this chapter or the rules issued pursuant to this chapter shall upon conviction thereof be punished, if an individual, by a fine of not more than \$1,000 or by imprisonment for not more than 1 year, or both; or, if a corporation, by a fine of not more than \$5,000. Any officer, director, employee, or agent of a corporation, or member, employee, or agent of a firm, partnership, or association, who personally participates in or is an accessory to any violation of this chapter or the rules issued pursuant to this chapter, by a firm, partnership, association, or corporation, shall be subject to the penalties provided for in this subsection for individuals, except that corporations shall be subject only to the monetary penalties. The penalties provided for in this subsection shall be in addition to and not in lieu of, any penalties provided for in any other law or regulation. Nothing contained in this chapter shall be construed as releasing any person from civil liability or criminal prosecution under the laws applicable to the District.

(b) All prosecutions for violation of this chapter or the rules issued pursuant to this chapter shall be brought in the Superior Court of the District of Columbia by the Corporation Counsel of the District or his or her assistant in the name of the District of Columbia.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 10, 1983, D.C. Law 4-209, § 27, 30 DCR 390; Oct. 5, 1985, D.C. Law 6-42, § 405, 32 DCR 4450.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 6-42.** — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No.

6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

## § 45-1947. Duties of Corporation Counsel.

The Corporation Counsel of the District or his or her assistant shall serve as counsel to the Mayor in all suits to which the Mayor may be a party and shall, at the Mayor’s request, attend and represent the Mayor at all public hearings which the Mayor may hold in the performance of his or her duties under this chapter. (Mar. 10, 1983, D.C. Law 4-209, § 28, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor’s Order 83-123, May 6, 1983.

**§ 45-1948. Establishment of Real Estate Guaranty and Education Fund; Mayor to determine sum for deposit into Fund.**

(a) There is established a Real Estate Guaranty and Education Fund (“Fund”).

(b) Except as provided in § 45-1949(k), on or after March 10, 1983, every real estate broker, real estate salesperson and property manager licensed under this chapter shall, as a condition for renewing his or her license, pay in addition to any other fees required under this chapter, the sum to be established by the Mayor for deposit into the Fund. On or after March 10, 1983, any person, before receiving an original real estate broker, real estate salesperson, or property manager license, shall pay, in addition to any other fees required under this chapter, a sum to be established by the Mayor for deposit into the Fund. (Mar. 10, 1983, D.C. Law 4-209, § 29, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(t), 31 DCR 4023.)

**Section references.** — This section is referred to in §§ 1-349, 45-1922, and 45-1949.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor’s Order 83-123, May 6, 1983.

**§ 45-1949. Applications for payments from Fund; maximum payment; management of Fund.**

(a) Any person who: (1) obtains a final judgment, including a settlement reduced to a final judgment, in any court of competent jurisdiction in the District against any other person on the grounds of fraud, misrepresentation, deceit, embezzlement, false pretenses, forgery, failure to account for or conversion of trust funds, or violation of the provisions of this chapter, arising directly out of any transaction which occurred when the other person was licensed under this chapter, during the course of which the licensee performed acts for which a license is required under this chapter, and which transaction occurred on or after March 10, 1983; and (2) meets the requirements of subsection (b) of this section; may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a written application, under oath, with the Mayor for an order directing payment from the Fund of the amount of actual and direct loss in the transaction (excluding the amount of any interest, attorney’s fees, court costs, or punitive or exemplary damages) which remains unpaid upon the judgment. The application shall be filed no later than 12 months after the date on which the judgment became final.

(b) A person filing an application meets the requirements of this subsection if:

(1) The person is not a licensee or the personal representative of a licensee and is not the spouse or child of the licensee against whom the final judgment was awarded, or the personal representative of the spouse or child;

(2) The person has made the investigation as is reasonably necessary to determine whether the judgment debtor possesses real or personal property or other assets which are liable to be sold or applied in satisfaction of the final judgment and has filed with the Commission an affidavit which states that the investigation has been made; and

(3) The investigation required by paragraph (2) of this subsection has not disclosed the existence of any real or personal property or other assets, or, if the investigation has disclosed the existence of real or personal property or other assets (which shall be described in the affidavit) the person has taken all action necessary for the sale or application, and the amount so realized is insufficient to satisfy the judgment (which amount shall have been stated in the affidavit together with the balance remaining due on the judgment after the sale or application).

(c) Notwithstanding any other provision of this section, the maximum amount that may be paid from the Fund to satisfy in whole or in part a final judgment against a licensee as provided for herein shall be as follows:

<u>Amount</u>
\$10,000 ..... Judgment is final during the first year following March 10, 1983;
\$20,000 ..... Judgment is final during the second year following March 10, 1983;
\$30,000 ..... Judgment is final during the third year following March 10, 1983;
\$40,000 ..... Judgment is final during the fourth year following March 10, 1983; and
\$50,000 ..... Judgment is final during the fifth year following March 10, 1983, and thereafter.

(d) The aggregate of claims by judgment creditors against the Fund based upon an unpaid final judgment arising out of the acts of the licensee in connection with a single transaction shall be \$50,000 regardless of the number of claimants. If the aggregate of claims exceeds \$50,000, the Commission shall pay \$50,000 to the claimants in proportion to the amounts of their final judgments against the Fund which remain unpaid. If the Mayor has reason to believe that there may be additional claims against the Fund arising out of the same transaction, the Mayor may withhold payment from the Fund involving the licensee for a period of not more than 1 year.

(e) Any person who commences an action for a judgment which could be the basis for an order of the Mayor directing payment from the Fund shall notify the Mayor in writing within 30 days after the date of the commencement of the action. Any failure to notify the Mayor as required under this subsection shall be grounds for the Mayor to deny an application of the person for payment from the Fund. The Mayor may waive this requirement if good cause is shown for failure to notify. The Mayor may, in accordance with the provisions of this chapter, commence an investigation of the complaint and hold a hearing to determine whether any license issued pursuant to this chapter should be suspended or revoked.

(f) Whenever an aggrieved person who has become a judgment creditor as provided in this section files an application for an order directing payment

from the Fund, the Mayor shall cause a copy of the application to be served on the licensee alleged to be the judgment debtor, by certified mail, return receipt requested, to the address of record of the licensee, and the matter shall be set for hearing before the Commission. Whenever the Mayor determines that the applicant is entitled to payment from the Fund, the Mayor shall issue an order directing payment from the Fund in an amount consistent with this chapter.

(g) If the Mayor issues an order directing payment from the Fund of any amount towards satisfaction of a judgment against a licensed real estate broker, real estate salesperson, or property manager, the license of the person shall be automatically suspended upon the issuance of the order. No real estate broker, real estate salesperson, or property manager shall be eligible to have his or her license restored until he or she has repaid in full the amount ordered paid from the Fund, plus interest at an annual rate established by the Mayor from the date of payment of the amount from the Fund, and has satisfied all rules governing licensure as set forth in this chapter.

(h) Whenever amounts deposited in the Fund are insufficient to satisfy any duly authorized claim or portion thereof, the Mayor shall, when sufficient money has been deposited or portions thereof, satisfy the unpaid claims in the order that the applications relating thereto were originally filed with the Mayor, including accumulated interest at an annual rate established by the Mayor for a period not to exceed 1 year in duration.

(i) In addition to the requirements of this chapter, if the Mayor determines that it is necessary to require the bonding requirements of licensees, the Mayor shall by rule establish bonding requirements as are deemed necessary to protect the public.

(j) All sums paid pursuant to § 45-1948 and subsection (c) of this section shall be deposited with the D.C. Treasurer and shall be credited to the Fund. Any interest earned from any deposits and investments of the Fund also shall be credited to the Fund. The interest to be credited to the Fund may be determined, consistent with the financial management procedures of the District and may be revised from time to time, as a pro-rata share of the interest earned on pooled cash, deposits, and investments.

(k) The Mayor shall, by rule, establish minimum and maximum balances for the Fund.

(l) Whenever the amount deposited in the Fund is less than the minimum balance established pursuant to subsection (k) of this section, the Mayor shall assess each licensee an amount, not to exceed \$20 during any license year, within 30 calendar days, which is sufficient, when combined with similar assessments of other licensees, to bring the balance of the Fund up to the minimum established. Whenever the amount deposited in the Fund is more than the maximum balance established, the Mayor shall waive contributions to the Fund required by this chapter.

(m) Notice of an assessment required pursuant to subsection (l) of this section shall be sent, by certified mail, to each licensee at his or her address of record. Payment of the assessment shall be made within 30 calendar days after the receipt by the licensee of the notice.

(n) A failure by any licensee to pay an assessment required pursuant to subsection (l) of this section within 30 days after the licensee has received

notice of the assessment shall result in the automatic suspension of the license of the licensee. The Commission shall send a notice of the suspension, by certified mail, to the address of record of the licensee within 5 days after the suspension. The license shall be restored only upon the actual receipt by the Mayor of the delinquent assessment, plus any interest and penalties as the Mayor may prescribe by rule.

(o) The Commission may expend a sum not to exceed 20% of the amounts deposited in the Fund, on October 1 of each year, for the establishment and maintenance of educational programs for improving the competency of licensees and applicants for licensure so as to further protect the public interest, and for conferences, workshops, and educational programs for real estate license officials. The cost of administering the Fund shall be paid out of the Fund.

(p) When the Mayor has ordered a sum from the Fund to be paid to a judgment creditor, the Mayor shall be subrogated to all of the rights of the judgment creditor up to the amount paid and the judgment creditor shall assign to the Mayor all rights, title, and interest in the judgment up to the amount paid from the Fund. Any amount and interest so recovered by the Mayor or the judgment creditor on the judgment up to the amount paid shall be deposited in the Fund. (Mar. 10, 1983, D.C. Law 4-209, § 30, 30 DCR 390; Sept. 26, 1984, D.C. Law 5-117, § 2(u), 31 DCR 4023.)

**Section references.** — This section is referred to in §§ 1-349 and 45-1948.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Legislative history of Law 5-117.** — See note to § 45-1929.1.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## **§ 45-1950. Additional criminal penalties.**

(a) Any person who knowingly files with the Mayor any application, notice, or other document required to be filed under this chapter or any rule issued thereunder, which is false or fraudulent or contains any material misstatement of fact, shall, upon conviction, be punished by a fine of no more than \$3,000 or by imprisonment for no more than 1 year, or both.

(b) The Corporation Counsel of the District may enter an appearance, file an answer, appear at court hearings, defend the action, or take whatever other action he or she deems appropriate on behalf of any party to a court proceeding in the District in which the Mayor may be interested, and may take recourse through any appropriate method of review on behalf and in the name of any party to a court action.

(c) Nothing contained in this chapter shall be construed as limiting the authority of the Mayor to take disciplinary action against any licensee pursuant to this chapter for any violation of this chapter or any rules promulgated under this chapter, nor shall repayment in full of the amount paid from the Fund on the licensee's account nullify or modify the effect of any other disciplinary proceeding brought against the licensee pursuant to this chapter for any violation. (Mar. 10, 1983, D.C. Law 4-209, § 31, 30 DCR 390.)

**Section references.** — This section is referred to in §§ 1-349 and 45-1938.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Delegation of authority under Law 4-209.** — See Mayor's Order 83-123, May 6, 1983.

## § 45-1951. Savings clause.

(a) The repeal of any provision of §§ 45-1901 to 45-1918, or any rule issued pursuant to this chapter, shall not affect any act done, or any right accruing or accrued on any liability arising, or any suit or proceeding had or commenced in any civil cause under §§ 45-1901 to 45-1918 before repeal, but all rights and liabilities under §§ 45-1901 to 45-1918 shall continue and may be enforced in the same manner and to the same extent as if this chapter had not been enacted.

(b) Any violation of any provision of §§ 45-1901 to 45-1918 or any liability arising under the provision, shall, if the violation occurred prior to repeal, be prosecuted and punished in the same manner and with the same effect as if this chapter had not been enacted. (Mar. 10, 1983, D.C. Law 4-209, § 33, 30 DCR 390.)

**Section references.** — This section is referred to in § 1-349.

**Legislative history of Law 4-209.** — See note to § 45-1921.

**Cited** in Brown v. Herman Miller, Inc., 890 F.2d 443 (D.C. Cir. 1989).

## CHAPTER 20. REAL ESTATE SALE OR RENT SIGNS.

Sec.

- 45-2001. Signs on sidewalk or parking prohibited; number of signs; removal; penalties.

### § 45-2001. Signs on sidewalk or parking prohibited; number of signs; removal; penalties.

No sign or advertisement relating to the sale, rent, or lease of land or premises shall be located on the sidewalk or parking of any street, avenue, or road in the District of Columbia. One painted or printed sign or advertisement for the sale, rent, or lease of land or premises may, with the written consent of the owner or legal representative of the owner, be placed, by any 1 of not exceeding 3 real estate agents, on any lot, piece, or parcel of land abutting on a street, avenue, or road in said District, or attached to the exterior of any building fronting thereon. The Mayor of the District of Columbia is authorized to use the police authority vested in him, to require the removal of any sign or advertisement in violation of this provision, and to institute prosecutions, in the Superior Court of the District of Columbia, against persons violating the provisions hereof, and every such person, upon conviction of such violation, shall be fined in the sum of not less than \$5 nor more than \$25. This section shall not apply to the temporary placement of directional signs relating to the sale or lease of real estate which indicate the holding of an open house or a sign attached to the 1 painted or printed sign allowed by this section which indicates that the premises have been sold, leased, or placed under contract. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 7-1001; Mar. 16, 1993, D.C. Law 9-189, § 2, 39 DCR 9001.)

**Cross references.** — As to power of Council to regulate and license out-of-door advertising signs, see §§ 1-325 to 1-327.

**Legislative history of Law 9-189.** — Law 9-189, the “Real Estate Sign Placement Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-200, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-310 and transmitted to both Houses of Congress for its review. D.C. Law 9-189 became effective on March 16, 1993.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

# HOUSING FINANCE AGENCY

## CHAPTER 21. HOUSING FINANCE AGENCY.

### *Subchapter I. Policy and Definitions.*

#### Sec.

- 45-2101. Declaration of policy.
- 45-2102. Definitions.

### *Subchapter II. Establishment of the Agency.*

- 45-2111. Creation; purpose.
- 45-2112. Board of Directors.
- 45-2113. Executive Director; powers and duties; service as Secretary of Board; other necessary employees; rights and privileges thereof.
- 45-2114. Conflict of interest; disclosure; waiver of bar against participation by interested party.
- 45-2115. Requirement for public official bonding.
- 45-2116. Delegation of Council in area of primarily low and moderate income housing.
- 45-2117. Agency reports; Council review and approval of proposals.

### *Subchapter III. Operations of the Agency.*

- 45-2121. General powers.
- 45-2122. Mortgage and construction loans to sponsors; tenant and buyer selection plans; income mixtures; minimum low-income units; maximum rents, prices, and incomes.
- 45-2123. Agency authorized to invest in, purchase, etc., mortgage loans for residential housing; limitations; requirements for reinvestment of proceeds by lender.
- 45-2124. Loans to mortgage lenders; requirements for reinvestment of proceeds by lender.
- 45-2125. Supportive programs; Mortgage Loan Guarantee Fund.
- 45-2126. Agency authorized to make rules and regulations; scope; guidelines.
- 45-2127. Technical assistance or loans for consultant services; conversion of loan to grant or consideration as development cost.
- 45-2128. Exemption from rent control.

### *Subchapter IV. Financial Affairs of the Agency.*

- 45-2131. Receipt of funds; disposition thereof.
- 45-2132. Issuance of bonds and notes; renew-

#### Sec.

- als and refunds; deemed obligations of Agency; negotiable instruments; director, employer, or agent not personally liable.
- 45-2133. Terms for sale of bonds and notes; effect of resolution authorizing sale; pledge of agency and lien thereon; signature valid after officeholder vacates.
- 45-2134. Trust indenture to secure bonds or notes; provisions protecting holders; expenses treated as operating expenses.
- 45-2135. Agency's purchase of its own bonds and notes; maximum price.
- 45-2136. Special or reserve funds; management and investment of funds.
- 45-2137. No limitation, alteration, or impairment of rights and remedies of bondholders and noteholders.
- 45-2138. Faith and credit and taxing power of District not pledged on obligation; statement thereto.
- 45-2139. Bonds and notes as legal investments and securities.
- 45-2140. District tax exemptions; payments in lieu; exceptions.
- 45-2141. Deposits; payments out of accounts; contracts involving monies held in trust or otherwise for payment of notes or bonds.
- 45-2142. [Repealed].
- 45-2143. Investment of funds with financial institution or company doing business with Northern Ireland.

### *Subchapter V. Public Accountability.*

- 45-2151. Agency actions governed by Administrative Procedure Act.
- 45-2152. Advisory Committee.
- 45-2153. Annual report by Agency; contents.
- 45-2154. Agency to arrange annual audit; transmission to Mayor and Council.

### *Subchapter VI. Miscellaneous Provisions.*

- 45-2161. Liberal construction of chapter.
- 45-2162. Severability.
- 45-2163. Allocation of bond issuing authority.
- 45-2164. Disposition of assets on dissolution.
- 45-2165. Laws or acts referred to in this chapter.

*Subchapter I. Policy and Definitions.***§ 45-2101. Declaration of policy.**

(a) The Council of the District of Columbia hereby finds: that a decline in the number of housing units in the District of Columbia, together with the existing number of substandard dwellings, has produced a critical shortage of adequate housing for low and moderate income families; that this shortage of affordable housing and the inability of residents to obtain appropriate financing compels a substantial number of District residents to live in unsanitary, overcrowded and unsafe conditions and to expend a disproportionate portion of their incomes on housing; that these conditions are detrimental to the health and welfare of District residents and adversely affect the economy of the District; that a major cause of this housing crisis is the cost of funds made available by mortgage lenders in the District to finance housing for low and moderate income families; and further that this situation has frustrated the construction, lease, sale and purchase of housing units for low and moderate income families.

(b) The Council determines that a corporate instrumentality of the District shall be created and given authority to generate funds from private and public sources to increase the supply and lower the cost of funds available for residential mortgages and construction loans and thereby help alleviate the shortage of adequate housing. The Council further determines that this purpose can be accomplished through programs whereby mortgage lenders and/or the Agency make mortgage, construction and rehabilitation loans for single and multifamily rental and home ownership units on terms designed to expand available housing opportunities. The Council further determines that the goals of neighborhood and fiscal stability can be achieved through a policy of residential economic diversity.

(c) The Council hereby declares that the enactment of this chapter is in the public interest and for the public benefit, and that the authority and powers conferred by this chapter and the expenditure of monies pursuant to this chapter are to serve valid public purposes. (1973 Ed., § 45-1901; Mar. 3, 1979, D.C. Law 2-135, § 101, 25 DCR 5008.)

**Legislative history of Law 2-135.** — Law 2-135, the “District of Columbia Housing Finance Agency Act,” was introduced in Council and assigned Bill No. 2-161, which was referred to the committee on Housing and Urban Development. The Bill was adopted on first and

second readings on July 25, 1978, and September 19, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-291 and transmitted to both Houses of Congress for its review.

**§ 45-2102. Definitions.**

The following terms as used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

- (1) “Chapter” means this Housing Finance Agency Act.
- (2) “Agency” means the District of Columbia Housing Finance Agency.

(3) "Board" means the Board of Directors of the District of Columbia Housing Finance Agency.

(4) "Bonds," "notes" and "other obligations" refer to any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness of the Agency authorized to be issued under the provisions of this chapter.

(5) "Council" means the Council of the District of Columbia.

(6) "Construction loan" means a short term advance of monies for the purpose of constructing or rehabilitating housing projects.

(7) "District" means the District of Columbia.

(8) "Eligible persons" means individuals and families who qualify for housing under a given program according to the requirements of the program as authorized by this chapter and rules and regulations promulgated by the Agency pursuant to such requirements.

(9) "Forward Commitment Mortgage Purchase Program" means a program pursuant to which the Agency commits to purchase from or originate through mortgage lenders mortgage loans committed to and originated by the mortgage lender or the Agency after the date of the Agency's commitment where the loans are to low or moderate income persons for financing housing units to be owner-occupied or are loans which meet the requirements of subsection (b) or (c) of § 45-2122.

(10) "Homeownership program" means any type of program through which a person can achieve an ownership position in a residential unit including, but not limited to, cooperatives (where the Agency so determines by resolution) and condominiums.

(11) "Housing project" means a number of dwelling units located in the District of Columbia assisted by the Agency under the provisions of this chapter including, but not limited to, units acquired, financed, refinanced, constructed, rehabilitated and/or converted to a condominium or a cooperative with the assistance of the Agency. A project may incorporate ancillary facilities which may include:

(A) Necessary or desirable appurtenances to residential housing such as, but not limited to, streets, sewers, utilities, parks and stores, as the Agency determines to be appropriate;

(B) Such community facilities including, but not limited to, health, recreational, educational and welfare facilities, as the Agency determines to be appropriate; and

(C) Ancillary commercial facilities which the Agency determines to be appropriate; provided, that the primary use (consistent with the Internal Revenue Code regulations, concerning tax exempt financing, as in effect from time to time) of the project shall be for residential housing.

(12) "Low-income persons" means persons and families whose annual income as determined by the Agency does not exceed the following percentages of the median Standard Metropolitan Statistical Area (SMSA) family income for the District of Columbia, as such SMSA family income may be revised from time to time:

Family Size	Percentage of SMSA Median Family Income
1 .....	50.4%
2 .....	57.6%
3 .....	64.8%
4 .....	72.0%
5 .....	76.5%
6 .....	81.0%
7 .....	85.5%
8 .....	90.0%

The Agency shall adjust upward from 90.0% the percent of SMSA Median Family Income by 4.5% for every additional family member over 8 persons.

(13) "Moderate income persons" means persons and families whose annual income as determined by the Agency does not exceed 120% of the median Standard Metropolitan Statistical Area (SMSA) family income (as such SMSA family income may be revised from time to time) applied to an 8 or more person household and adjusted downward for household size in accordance with a formula adopted by the Agency.

(14) "Mortgage" means an interest in real property located within the District of Columbia which is improved or to be improved by 1 or more housing units, which interest secures a mortgage loan or participation in a mortgage loan and constitutes a lien on the fee simple interest in such real property or on a leasehold interest therein having an unexpired term longer than the term in which the mortgage loan secured is to be amortized.

(15) "Mortgage lender" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in the District, or any insurance company authorized to do business in the District and deemed eligible by the Agency to participate in any of its programs.

(16) "Mortgage loan" means an obligation secured by a mortgage issued for the purposes of financing residential housing.

(17) "Sponsor" means a sole proprietor, joint venture, partnership, limited partnership, trust, corporation, cooperative, or condominium, whether non-profit or organized for profit, which owns or sponsors a housing project pursuant to the provisions of this chapter.

(18) "Subsidy" means any resources generated through appropriation by the federal or District government, or donated by a public or private source; the resources must be designated for meeting housing expense and may be payments to the occupant of a housing unit as reimbursement for monies expended, payment made for supplementing housing or rent payments made by an occupant, or payments made to effect a reduction in mortgage interest rates paid by the mortgagor of a housing unit.

(19) "Cooperative" means a rental housing unit or project, unless the Agency determines by resolution that a given unit or units in a given project shall be deemed to be a homeownership housing unit or project. (1973 Ed., § 45-1902; Mar. 3, 1979, D.C. Law 2-135, § 102, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(a)-(f), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — Law 4-28, the “District of Columbia Housing Finance Agency Act Amendments Act of 1981,” was introduced in Council and assigned Bill No. 4-145, which was referred to the Committee

on Housing and Economic Development. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-49 and transmitted to both Houses of Congress for its review.

## *Subchapter II. Establishment of the Agency.*

### **§ 45-2111. Creation; purpose.**

The District of Columbia Housing Finance Agency is created as a corporate body which has a legal existence separate from the government of the District but which is an instrumentality of the government of the District created to effectuate certain public purposes. (1973 Ed., § 45-1903; Mar. 3, 1979, D.C. Law 2-135, § 201, 25 DCR 5008.)

**Section references.** — This section is referred to in § 1-1462.

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Appropriations approved.** — Public Law 101-518, 104 Stat. 2227, the District of Columbia Appropriations Act, 1991, provided that up

to \$275,000 within the 15% set-aside for special programs within the Tenant Assistance Program shall be targeted for the single-room occupancy initiative.

Cited in Sims v. District of Columbia, App. D.C., 531 A.2d 648 (1987).

### **§ 45-2112. Board of Directors.**

(a) The agency shall be governed by a Board of Directors, which shall be comprised of 5 members who are residents of the District of Columbia. Two shall have experience in mortgage lending or finance, 2 shall have experience in home building, real estate, architecture, or planning, and 1 shall represent community or consumer interests. The public members shall be appointed by the Mayor, with advice and consent of the Council. Public members shall be appointed for 2-year terms. Of the 5 public members first appointed pursuant to this chapter, 2 shall serve for a term of 1 year and 3 shall serve for a term of 2 years.

(b) The appointing authority or the Board may remove a public member of the Board for inefficiency, neglect of duty or misconduct in office, after giving the member a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense upon not less than 10 days' notice. Removal of a public member by action of the Board shall require an affirmative vote of 3 members. If a public member is removed by the Board, the Board shall promptly notify the Mayor and the Council of the action. Within 30 days after a vacancy occurs or a term expires, the Mayor shall nominate someone to fill the vacancy or begin the new term. The public member shall hold office for the term of his appointment and shall serve until a successor has qualified. Any public member shall be eligible for reappointment.

(c) The Board shall elect from among its number a chairperson, a vice chairperson, and other officers it may determine.

(d) The powers of the Agency shall be vested in the Board. Three members of the Board shall constitute a quorum for the transaction of business, and an

affirmative vote of at least 3 members shall be necessary for valid Agency action. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and perform all duties of the Agency. Members of the Board shall be reimbursed for actual and necessary expenses incurred while engaged in services for the Agency. A member of the Board not otherwise employed by the District may also receive per diem compensation at the rate equal to the daily equivalent of step 1 of Grade 15 of the General Schedule established under 5 U.S.C. § 5332, with a limit of \$8,000 per annum.

(e)(1) Until all public members have been appointed and confirmed in accordance with subsection (a) of this section or the expiration of 45 days from the effective date of the District of Columbia Housing Finance Agency Act Second Amendment Emergency Act of 1985, whichever first occurs, the Agency shall be governed by a 5-member interim Board of Directors, comprised as follows:

- (A) The Deputy Mayor for Finance;
- (B) The Deputy Mayor for Economic Development;
- (C) The Director of the Department of Housing and Community Development;
- (D) The Chairperson of the Council's Committee on Housing and Economic Development; and
- (E) The Chairman of the Council, or, if he chooses not to serve, a member of the Council's Committee on Housing and Economic Development designated by the Chairman.

(2) Failure of a Councilmember to continue in office or to continue as a member of the Committee shall create a vacancy on the Board and the vacancy shall be filled in accordance with this subsection. The members of the interim Board shall select a chairperson from among their number. Each ex officio member or Councilmember may designate a representative to perform his respective duties and powers under this chapter, including the power to vote. Notwithstanding the provisions of any other law, no officer or employee of the District shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the Board or his service thereon. (1973 Ed., § 45-1904; Mar. 3, 1979, D.C. Law 2-135, § 202, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(g), 28 DCR 2848; May 9, 1985, D.C. Law 6-4, § 2(a), 32 DCR 1602; Aug. 1, 1985, D.C. Law 6-15, § 8(a), 32 DCR 3570; Oct. 5, 1985, D.C. Law 6-44, § 2(a), 32 DCR 4487.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**Legislative history of Law 6-4.** — See note to § 45-2117.

**Legislative history of Law 6-15.** — Law 6-15, the "Legislative Veto Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985, and

May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-44.** — See note to § 45-2117.

**Supersedure of Law 6-4.** — Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

**§ 45-2113. Executive Director; powers and duties; service as Secretary of Board; other necessary employees; rights and privileges thereof.**

(a) The Board of Directors shall appoint an Executive Director who shall be an employee of the Agency, but who shall not be a member of the Board, and who shall serve at the pleasure of the Board and receive such compensation as shall be fixed by the Board. The Executive Director shall be appointed by the Board with the advice and consent of the Council. The Executive Director shall administer, manage and direct the affairs and activities of the Agency in accordance with the policies, control and direction of the Board. The Executive Director shall approve all accounts for salaries, allowable expenses of the Agency or of any employee or consultant thereof, and expenses incidental to the operation of the Agency. He shall perform such other duties as may be directed by the Board in carrying out the purposes of this chapter.

(b) The Executive Director shall be Secretary to the Board. He shall attend the meetings of the Board, shall keep a record of the proceedings of the Board, and shall maintain and be custodian of all books, documents and papers filed with the Board, of the minutes book or journal of the Board and of its official seal.

(c) The Agency may employ on a permanent or temporary basis technical advisors, accountants, legal counsel, appraisers and such other officers, agents and employees it deems necessary to operate the Agency efficiently, and shall determine their qualifications, duties and compensation without regard to federal or District Civil Service or classification laws. Federal or District employees employed by the Agency may retain all rights and privileges under the federal or District employees' retirement systems. Appointments, promotions and separations may be based on merit only. Title 5, Chapter 53, subchapter III of the United States Code applies to the Board and employees of the Agency to the same extent as to District employees. (1973 Ed., § 45-1905; Mar. 3, 1979, D.C. Law 2-135, § 203, 25 DCR 5008; May 9, 1985, D.C. Law 6-4, § 2(b), 32 DCR 1602; Oct. 5, 1985, D.C. Law 6-44, § 2(b), 32 DCR 4487.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 6-4.** — See note to § 45-2117.

**Legislative history of Law 6-44.** — See note to § 45-2117.

**Supersedure of Law 6-4.** — Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

**§ 45-2114. Conflict of interest; disclosure; waiver of bar against participation by interested party.**

(a) *Board of Directors and employees of Agency.* — Any member, officer or employee of the Agency who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested directly or indirectly in any transaction with the Agency including, but not limited to, any loan to any sponsor, builder or developer, shall disclose

this interest to the Agency. This interest shall be set forth in the minutes of the Agency, and the member, officer, or employee having the interest shall not participate on behalf of the Agency in the authorization or implementation of any such transaction. The Board by two-thirds majority vote may allow a waiver of a member's, officer's or employee's inability to participate in circumstances where the interest falls within guidelines adopted as rules promulgated by the Board.

(b) *Advisory Committee.* — Any member or officer of the Advisory Committee who, in the discharge of official duties of the Advisory Committee, would be required to take actions or make recommendations that would directly or indirectly affect his or her financial or ownership interests, or to which he or she has a conflict situation created by a personal, family, or client interest, shall disclose this information in writing to the Chairman of the Advisory Committee. All disclosures shall be included in the written record of the Committee's proceedings. The Chairman shall excuse members, having interests or conflicts, from participation on behalf of the Committee on any such transactions. The Committee may, by a two-thirds majority vote, allow a waiver of a member or officer's participation in circumstances where the interest falls within the guidelines adopted as rules promulgated by the Agency. (1973 Ed., § 45-1906; Mar. 3, 1979, D.C. Law 2-135, § 204, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(h), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101. **Legislative history of Law 4-28.** — See note to § 45-2102.

### **§ 45-2115. Requirement for public official bonding.**

Each member of the Board shall execute a public official bond in the penal sum of \$25,000, and the Executive Director of the Agency shall execute a public official bond in the penal sum of \$50,000. Each public official bond shall be conditioned upon the faithful performance of the duties of the person bonded, issued by an indemnity company authorized to transact business as an indemnity company in the District, approved by the Corporation Counsel of the District, and filed in the office of the District Department of Insurance. All costs of the public official bonds shall be borne by the Agency. (1973 Ed., § 45-1907; Mar. 3, 1979, D.C. Law 2-135, § 205, 25 DCR 5008; Oct. 5, 1985, D.C. Law 6-44, § 2(c), 32 DCR 4487.)

**Legislative history of Law 2-135.** — See note to § 45-2101. **Legislative history of Law 6-44.** — See note to § 45-2117.

### **§ 45-2116. Delegation of Council in area of primarily low and moderate income housing.**

The Council delegates to the Agency the authority of the Council under § 47-334 to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing of undertakings in the area of primarily low and moderate income housing. An undertaking financed or assisted by the Agency shall constitute an "undertaking in the area of primarily low and

moderate income housing" where the Agency determines in accordance with this section at the time it approves the undertaking for financing or assistance that the undertaking meets the requirements of the chapter as it may be amended from time to time, and will increase the number of housing units in the District made available or rehabilitated for persons of low and moderate income, as low income persons and moderate income persons are defined in this chapter. Such a determination shall include a finding that, of the aggregate housing units made available or rehabilitated or to be made available or rehabilitated as the result: (1) of such undertaking; (2) of an Agency housing program which reflects or includes such undertaking; or (3) of all undertakings approved by the Agency prior to and concurrently with approval of such undertaking; more than half such units shall be or have been made available or rehabilitated for persons of low and moderate income as so defined. In any event, no undertaking shall be deemed to be an undertaking in the area of primarily low and moderate income housing: (1) if fewer than 20% of the housing units made available or rehabilitated as the result of that undertaking shall be made available or rehabilitated for persons of low and moderate income; or (2) if fewer than half (but more than 20%) of the housing units made available or rehabilitated as the result of that undertaking shall be made available or rehabilitated for persons of low and moderate income unless the Agency determines that the undertaking will further the Agency's policy of residential economic diversity, thereby furthering the goal of increasing low and moderate income housing in the District. An "Agency housing program" as used in this section, means a program for financing or assisting housing that has been formally adopted by the Agency. (Aug. 5, 1981, D.C. Law 4-28, § 2(i), 28 DCR 2848.)

**Legislative history of Law 4-28.** — See note to § 45-2102.

### **§ 45-2117. Agency reports; Council review and approval of proposals.**

(a) The Agency shall send to the Chairman of the Council of the District of Columbia a report on each application to finance a designated project, that is filed with the Agency within 14 days (exclusive of Saturdays, Sundays, and legal holidays) of the filing. The report shall set forth information initially provided in each application pertaining to the:

- (1) Date of application;
- (2) Name and description of the project;
- (3) Address and ward location of the project;
- (4) Developer of the project;
- (5) Amount and type of financing requested; and
- (6) Amount and type of federal or District funds involved.

(b)(1) The Board of Directors of the Agency shall determine, by enactment of an eligibility resolution that a housing undertaking contemplated to be financed meets the requirements of this chapter. Subsequent to enactment of

an eligibility resolution, the Agency shall send to the Chairman of the Council of the District of Columbia written notification thereof and:

(A) In the case of designated projects, the notification shall describe the nature of the project and shall describe the housing benefits designed to result therefrom, as related to the public purposes of the Agency; or

(B) In the case of housing programs, the notification shall describe the criteria under which funds will be made available and shall describe the housing benefits designed to result therefrom, as related to the public purposes of the Agency.

(2) The Agency may not adopt an inducement resolution or a resolution authorizing a bond issuance to fund a project nor may the agency implement a proposed housing program submitted in accordance with this section unless the proposal has been submitted to the Council for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess. During the Council review period, comments of the Council representative from the affected ward shall be considered.

(3) If, during the 30-day review period, the Council does not adopt a resolution disapproving the proposal, the Agency may take action to implement the proposal. The Council may adopt a resolution approving the proposal prior to expiration of the 30-day period in which case the Agency may take immediate action to implement the proposal.

(c) In the event a proposal is disapproved, the resolution shall state the reasons for disapproval. The Agency staff may modify the proposal to address the concerns expressed in the resolution of disapproval and may without further action of the Board resubmit the proposal, as modified, for a 30-day review period, excluding days of Council recess. If, during the 30-day review period the Council does not adopt a resolution disapproving the resubmitted proposal, the Agency may take action to implement the proposal. The Council may adopt a resolution approving the resubmitted proposal prior to the expiration of the 30-day review period in which case the Agency may take immediate action to implement the proposal. For purposes of this section the term "proposal" shall include housing projects and programs. (Mar. 3, 1979, D.C. Law 2-135, § 207, as added May 9, 1985, D.C. Law 6-4, § 2(c), 32 DCR 1602; Oct. 5, 1985, D.C. Law 6-44, § 2(d), 32 DCR 4487; Feb. 24, 1987, D.C. Law 6-192, § 12, 33 DCR 7836.)

**Legislative history of Law 6-4.** — Law 6-4, the "District of Columbia Housing Finance Agency Act Amendment Temporary Act of 1985," was introduced in Council and assigned Bill No. 6-77. The Bill was adopted on first, amended first and second readings on January 16, 1985, February 26, 1985, and March 12, 1985, respectively. Signed by the Mayor on March 14, 1985, it was assigned Act No. 6-15 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-44.** — Law 6-44, the "District of Columbia Housing Finance Agency Act Amendment Act of 1985," was introduced in Council and assigned Bill No.

6-207, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-62 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-192.** — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned

Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Supersedure of Law 6-4.** — Section 3(b) of D.C. Law 6-44 provided that upon October 5, 1985, the act shall supersede the District of Columbia Housing Finance Agency Amendment Act Temporary Act of 1985, effective May 9, 1985 (D.C. Law 6-4).

**Approval of Mount Vernon Plaza Apartments as eligible project for financing.** — Pursuant to Resolution 6-769, the “Mount Vernon Plaza Approval Resolution of 1986,” effective July 8, 1986, the Council approved the Mount Vernon Plaza as an eligible project for financing.

**Approval of 1986 Single-Family Forward Commitment Mortgage Purchase Program as eligible for financing.** — Pursuant to Resolution 6-770, the “Housing Finance Agency Single-Family Forward Commitment Mortgage Purchase Resolution of 1986,” effective July 8, 1986, the Council approved the program as eligible for financing.

**Approval of Jeffrey Gardens Apartments Project as eligible for financing.** — Pursuant to Resolution 7-203, the “District of Columbia Housing Finance Agency Jeffrey Gardens Apartments Project Approval Resolution of 1988”, effective January 5, 1988, the Council approved the Jeffrey Gardens Apartments as an eligible project for financing.

**Approval of Monroe Tower Apartments Project as eligible for financing.** — Pursuant to Resolution 7-205, the “District of Columbia Housing Finance Agency Monroe Towers Apartments Project Approval Resolution of 1988”, effective January 5, 1988, the Council approved the Monroe Towers Apartments as an eligible project for financing.

**Approval of Southern Gardens Apartments Project as eligible for financing.** — Pursuant to Resolution 7-206, the “District of Columbia Housing Finance Agency Southern Gardens Apartments Project Approval Resolution of 1988,” effective January 5, 1988, the Council approved the Southern Gardens Apartments as an eligible project for financing.

**Approval of Collateralized Single-Family Mortgage Purchase Program.** — Pursuant to Resolution 7-271, the “Housing Finance Agency Collateralized Single-Family Mortgage Purchase Resolution of 1988”, effective May 31, 1988, the Council approved the Collateralized Single-Family Mortgage Purchase Program.

**Approval of Supplemental Collateralized Single-Family Mortgage Purchase Program.** — Pursuant to Resolution 7-344, the “Housing Finance Agency Supplemental Collateralized Single-Family Mortgage Purchase Resolution of 1988”, effective November 15, 1988, the Council approved the Supplemental Collateralized Single-Family Mortgage Purchase Program.

**Approval of District of Columbia Housing Finance Agency’s proposal for Massachusetts Courts Apartments.** — Pursuant to Resolution 8-70, the “District of Columbia Housing Finance Agency Massachusetts Courts Apartments Approval Resolution of 1989”, effective June 27, 1989, the Council approved the District of Columbia Housing Agency’s proposal for the Massachusetts Courts Apartments.

**Approval of Columbia Housing Finance Agency’s proposal for Parkchester Apartments.** — Pursuant to Resolution 8-245, the “D.C. Housing Finance Agency Parkchester Apartments Resolution of 1990,” effective July 27, 1990, the Council approved the District of Columbia Housing Finance Agency’s proposal for the Parkchester Apartments.

**District of Columbia Housing Finance Agency Chastleton Apartments Refunding Resolution of 1991.** — Pursuant to Resolution 9-67, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency’s proposal for the Chastleton Apartments.

**District of Columbia Housing Finance Agency Mount Vernon Plaza Apartments Refunding Resolution of 1991.** — Pursuant to Resolution 9-68, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency’s proposal for the Mount Vernon Plaza Apartments.

**District of Columbia Housing Finance Agency Carmel Plaza North Apartments Refunding Resolution of 1991.** — Pursuant to Resolution 9-69, effective June 14, 1991, the Council approved the District of Columbia Housing Finance Agency’s proposal for the Carmel Plaza North Apartments.

**District of Columbia Housing Finance Agency Parkchester Apartments Project Supplemental Financing Emergency Approval Resolution of 1991.** — Pursuant to Resolution 9-106, effective July 19, 1991, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency’s supplemental proposal for the Parkchester Apartments.

**Housing Finance Agency Savannah Park Apartments Approval Resolution of 1992.** — Pursuant to Resolution 9-322, effective July 24, 1992, the Council approved the District of Columbia Housing Finance Agency’s proposal for the Savannah Park Apartments.

**Housing Finance Agency Cloister (a.k.a. “Trinity” Apartments) Refunding Approval Emergency Resolution of 1993.** — Pursuant to Resolution 10-160, effective October 5, 1993, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency’s Proposal for the Cloister (a.k.a. “Trinity”) Apartments.

**Housing Finance Agency New Amsterdam Apartments Refunding Ap-**

**proval Emergency Resolution of 1993.** — Pursuant to Resolution 10-162, effective October 5, 1993, the Council approved, on an emergency basis, the District of Columbia Housing Finance Agency's proposal for the New Amsterdam Apartments.

**District of Columbia Housing Finance Agency Tyler House Apartments Multi-Family Housing Revenue Bonds Approval Emergency Resolution of 1994.** — Pursuant to Resolution 10-493, effective December 6, 1994, the Council approved, on an emergency basis, the Housing Finance Agency's proposal for the Tyler House Apartments.

**District of Columbia Housing Finance Agency Single Family Forward Commitment Mortgage Purchase Program Approval Emergency Resolution of 1994.** — Pursuant to Resolution 10-495, the Council approved, on an emergency basis, the Housing Finance Agency's proposal for the 1994 Single Family Forward Commitment Mortgage Purchase Program.

**District of Columbia Housing Finance Agency Livingston Manor Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995.** — Pursuant to Proposed Resolution 11-60, deemed approved April 5, 1995, Council approved the District of Columbia Housing Finance Agency's proposal for the Livingston Manor Apartments.

**District of Columbia Housing Finance Agency Benning Road Apartments Multi-Family Housing Revenue Bonds Emergency Approval Resolution of 1995.** — Pursuant to Resolution 11-80, effective June 6, 1995, the Council approved, on an emergency

basis, the District of Columbia Housing Finance Agency's proposal for the Benning Road Apartments.

**District of Columbia Housing Finance Agency Capitol Hill Towers Apartments Multi-family Mortgage Revenue Refunding Bonds Resolution of 1995.** — Pursuant to Resolution 11-162, effective November 7, 1995, the Council approved the District of Columbia Housing Finance Agency's proposal to refund the Capitol Hill Towers Apartment Project bonds.

**District of Columbia Housing Agency 1995 Single Family Forward Commitment Mortgage Purchase Program Approval Emergency Resolution of 1995.** — Pursuant to Resolution 11-114, effective July 11, 1995, Council approved, on an emergency basis, District of Columbia Housing Finance Agency's proposal for the 1995 Single Family Forward Commitment Mortgage Purchase Program.

**District of Columbia Housing Finance Agency Capitol Park Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995.** — Pursuant to Proposed Resolution 11-263, deemed approved, November 2, 1995, Counsel approved the District of Columbia Housing Finance Agency's proposal for the Capitol Park Apartments.

**District of Columbia Housing finance Agency Dakotas Apartments Multi-Family Mortgage Revenue Bonds Resolution of 1995.** — Pursuant to Proposed Resolution 11-264, deemed approved, November 2, 1995, Counsel approved the District of Columbia Housing Finance Agency's proposal for the Dakotas Apartments.

### *Subchapter III. Operations of the Agency.*

#### **§ 45-2121. General powers.**

The Agency is hereby granted all powers necessary or convenient to effectuate its corporate purposes, including but not limited to, the following:

- (1) To have perpetual succession;
- (2) To sue and be sued in its own name;
- (3) To have an official seal and power to alter that seal at will;
- (4) To maintain an office at such place or places within the District as it may designate;
- (5) To adopt, amend and repeal bylaws, rules and regulations to carry out its purposes under this chapter;
- (6) To make and execute contracts and all other instruments for the performance of its duties under this chapter including, but not limited to, contracts or agreements for the servicing and originating of mortgage loans;
- (7) To employ advisers, consultants, and agents including, but not limited to, financial advisers, appraisers, accountants and legal counsel, and to fix their compensation;

(8) To collect reasonable interest, fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(9) To procure insurance or self-insure against any loss in connection with its property and other assets, including mortgage loans, in such amounts and from such insurers as it deems desirable;

(10) To borrow money and to issue bonds, notes or other evidences of indebtedness and to give security therefor;

(11) To enter into agreements with the United States or any agency, department, instrumentality or political subdivision thereof, to provide that interest on any bonds, notes or other evidences of indebtedness of the Agency will be subject to federal income taxes;

(12) To contract for and to receive contributions, gifts, grants, subsidies, and loans of money, property, labor or other things of value from any source to be used for the purpose of this chapter and subject to the conditions upon which the contributions, gifts, grants, subsidies, and loans are made;

(13) To enter into agreements with any department, agency or instrumentality of the United States or the District and with sponsors and mortgage lenders for the purpose of planning, regulating and providing for the financing and refinancing, construction, reconstruction or rehabilitation, leasing, management, maintenance, operation, acquisition, sale or other disposition of any housing project undertaken with the assistance of the Agency under this chapter;

(14) To proceed with foreclosure action, to take assignments of leases and rentals, to acquire property in lieu of foreclosure;

(15) To own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, operate, assign, encumber, or sell or otherwise dispose of any real or personal property if:

(A) The property was obtained by the Agency due to the default of any obligation held by the Agency; and

(B) The Agency's actions, as provided in this paragraph, are in preparation for disposition of such properties;

(16) To invest any funds not required for immediate disbursement, including funds held in reserve, in investments; the income derived from the investment shall be deposited as provided in § 45-2141;

(17) To provide technical assistance to profit and nonprofit entities in the development or operation of housing for low and moderate income persons in accordance with § 45-1914; to gather and distribute data and information concerning the housing needs of low and moderate income persons within the District;

(18) To the extent permitted under its contract with the holders of bonds, notes and other obligations of the Agency, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, or contract or agreement of any kind to which the Agency is a party;

(19) To sell, at public or private sale, with or without public bidding, any mortgage or other obligation held by the Agency pursuant to regulations promulgated by the Agency;

(20) To make construction loans in keeping with the public purposes of this chapter; and

(21) To do any act necessary or convenient to the exercise of the powers granted by or reasonably implied from this chapter. (1973 Ed., § 45-1908; Mar. 3, 1979, D.C. Law 2-135, § 301, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(j), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**References in text.** — Section 45-1914, referred to in (17), was repealed March 10, 1983, by D.C. Law 4-209, § 34.

**Repayment to General Fund.** — Public Law 103-334, 108 Stat. 2577, the District of Columbia Appropriations Act, 1995, provided for economic development and regulation \$56,343,000; *provided that* the District of Columbia Housing Finance Agency, established by § 45-2111, based upon its capability of repayments as determined each year by the Council of the District of Columbia from the Housing Finance Agency's annual audited financial statements to the Council of the District of Columbia, shall repay to the general fund an

amount equal to the appropriated administrative costs plus interest at a rate of four % per annum for a term of 15 years, with a deferral of payments for the first three years; *provided further*, that notwithstanding the foregoing provision, the obligation to repay all or part of the amounts due shall be subject to the rights of the owners of any bonds or notes issued by the Housing Finance Agency and shall be repaid to the District of Columbia government only from available operating revenues of the Housing Finance Agency that are in excess of the amounts required for debt service, reserve funds, and operating expenses; *provided further*, that upon commencement of the debt service payments, such payments shall be deposited into the general fund of the District of Columbia.

## § 45-2122. Mortgage and construction loans to sponsors; tenant and buyer selection plans; income mixtures; minimum low-income units; maximum rents, prices, and incomes.

(a) *Authorization.* — (1) The Agency may make, participate in making, and undertake commitments to make or participate in making mortgage loans to sponsors for the financing of housing projects for eligible persons. Such housing projects must meet the requirements of subsection (b) or (c) of this section.

(2) The Agency may make, participate in making, and undertake commitments to make or participate in making construction loans to sponsors for construction, reconstruction or rehabilitation of housing projects for eligible persons. Such housing projects must meet the requirements of subsection (b) or (c) of this section.

(b) *Rental housing program requirements.* —

(1) *Tenant income mixtures.* — (A) With respect to each rental housing project, the sponsor shall submit a tenant selection plan which must be reviewed and approved by the Agency prior to the final commitment to assist the project. The plan shall provide that a minimum of 20% of the units are initially rented to low-income persons and that 5% of the 20% set-aside be rented to very low-income persons who fall within 50% or less of the Metropolitan Statistical Area median. In addition, the plan must provide for a

heterogeneous mixture of low, moderate and above moderate income persons to the extent that, in the discretion of the Agency, such a mixture is made possible by the availability of below market financing and rental market conditions. The Agency is not prohibited from financing a rental housing project in which all tenants or all units are eligible for 1 or more subsidies if the Agency determines that such rental housing project is consistent with the goal of undertakings in the area of primarily low and moderate income housing.

(B) With respect to all rental housing projects for which the Agency has provided commitments for financing during each 2-year period, the aggregate number of units rented to low-income persons, as provided in the tenant selection plans approved by the Agency, must not be less than 25%. The first 2-year period concludes at the end of the Agency's second full fiscal year following the date of the Agency's first rental housing loan commitment. If the Agency fails to meet the 25% requirement for any given 2-year period, the Agency, in its annual report for the second year of the subject period, must submit explanation and documentation to justify its failure to meet this requirement. Within 60 days from the date the Council receives the annual report, the Council, by resolution, may relieve the Agency of further requirements as regards the subject 2-year period, or require the Agency to finance a specified number of low-income rental units in addition to the 25% requirement for the succeeding 2-year period. The resolution may not require a greater number of additional low-income rental units than would have been sufficient to meet the 25% requirement for the subject period. In the event the Council does not act by resolution within 60 days from the date of receipt of the annual report, the Agency shall be relieved of any further obligation to meet the requirements of the subject period. The 60 days for Council review shall not include days that pass during a recess of the Council.

(C) Each sponsor shall continue to rent to low-income persons no less than 20% of the project's total units; provided, however, that this requirement shall not apply when subsidies available to the sponsor at the time of initial rental are no longer available. Implementation of this provision does not require or sanction eviction of any tenant.

(2) *Tenant income and rent limitations.* — (A) Sponsors shall not charge low-income persons annual rent which exceeds 30% of annual income except where the Agency makes a determination that the lack of adequate subsidies or other financial considerations make fulfillment of this requirement unattainable.

(B) The annual income of persons initially selected for rental of a unit not rented to low-income persons shall not exceed 6 times the annual rent charged during the initial leasing period.

(C) Where feasible pursuant to rules promulgated by the Agency, the Agency shall require that rents of nonsubsidized units are affordable to persons of moderate income at rent levels not economically burdensome in proportion to their incomes. The rules promulgated by the Agency to implement such rent levels for nonsubsidized units shall take into account: (i) the availability of mortgage finance rate reductions for projects in which such units are located; (ii) the percentage of total units in such projects which is

rented to tenants of above moderate income and the rents charged such tenants; and (iii) relevant housing market conditions including, but not limited to, the extent of demand for nonsubsidized units in relation to available supply of such units. For the purposes of this subparagraph, the term "mortgage finance rate reduction" means the differential between prevailing mortgage interest rates and a lower rate which is paid by a sponsor of a project for which financing has been made available, directly by the Agency or through a mortgage lender, from the proceeds of a bond or bonds issued by the Agency.

(3) *Limitation on distributions.* — A sponsor may make annual distributions up to 12% of the sponsor's equity in a rental housing project financed by the Agency, except that distributions in excess of 8% shall be approved by the Agency prior to the Agency financing the housing project. The annual distributions may be made on a cumulative basis, but in no event shall the distributions exceed 15% in any given year. The sponsor's equity in a project shall consist of the difference between the mortgage loan and the total project cost as established by the Agency at the time of the final mortgage advance.

(c) *Homeownership program requirements.* — (1) With respect to each homeownership project, the sponsor shall submit a buyer selection plan which shall be reviewed and approved by the Agency prior to the final commitment to assist the project. The plan must provide that at least 50% of the units are to be initially set aside for sale to low or moderate income persons. To the extent made possible by the availability to below market financing, housing market conditions, and the proportion of unrestricted units, the plan must provide for a heterogeneous mixture of low and moderate income persons. Prices of all units shall be acceptable to the Agency.

(2) The sponsor shall set the sale price of individual units so that total profit does not exceed 20% of total housing project costs as originally projected by the sponsor and accepted by the Agency at the time of its commitment to assist the project. (1973 Ed., § 45-1909; Mar. 3, 1979, D.C. Law 2-135, § 302, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(k), 28 DCR 2848; Aug. 1, 1985, D.C. Law 6-15, § 8(b), 32 DCR 3570; Oct. 5, 1985, D.C. Law 6-44, § 2(e), 32 DCR 4487.)

**Section references.** — This section is referred to in §§ 45-2102, 45-2123 and 45-2124.

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**Legislative history of Law 6-15.** — See note to § 45-2112.

**Legislative history of Law 6-44.** — See note to § 45-2117.

## § 45-2123. Agency authorized to invest in, purchase, etc., mortgage loans for residential housing; limitations; requirements for reinvestment of proceeds by lender.

(a) *Authorization.* — The Agency may invest in, purchase, make commitments to purchase, take assignments from mortgage lenders of, and originate mortgage loans made for the financing of residential housing located in the District. Except for loans purchased or originated under the Forward Commit-

ment Mortgage Purchase Program, a mortgage loan is not eligible for purchase or commitment to purchase by the Agency hereunder unless the mortgage lender initially certifies that the proceeds of sale or its equivalent will be reinvested in mortgage loans or notes in accordance with paragraph (1) of subsection (b) of this section. The Agency shall provide, by contract or regulation or both, appropriate methods of enforcement of the mortgage lender's obligation to reinvest the proceeds of sale of a mortgage loan and the terms and conditions upon which a mortgage lender shall act on behalf of the Agency in its origination of mortgage loans.

(b) *Mortgage purchase program requirements.* — (1) With respect to the purchase of loans other than under the Forward Commitment Mortgage Purchase Program, the Agency shall require the mortgage lender to reinvest the proceeds as follows, including any combination thereof:

(A) In the case of loans to sponsors for rental housing projects, in accordance with the requirements of § 45-2122(b);

(B) In the case of loans to sponsors for homeownership projects, in accordance with the requirements of § 45-2122(c); or

(C) In the case of other owner-occupied housing, in mortgage loans for low or moderate income persons where housing units are or are to be owner-occupied.

(2) Mortgage loans purchased or originated under the Forward Commitment Mortgage Purchase Program must be made as follows:

(A) In the case of loans to sponsors for rental housing projects, in accordance with the requirements of § 45-2122(b);

(B) In the case of loans to sponsors for homeownership projects, in accordance with the requirements of § 45-2122(c); or

(C) In the case of owner-occupied housing, in mortgage loans to low or moderate income persons where the housing units are or are to be owner-occupied.

(3) The Agency shall require that loans made in fulfillment of the reinvestment requirements of paragraph (1) of this subsection are at interest rates which insure that the borrower will benefit to the maximum extent feasible from the below market interest cost of Agency bond and note proceeds used to purchase mortgage loans from the lender under subsection (a) of this section.

(4) The Agency shall purchase mortgage loans at a purchase price not in excess of the unpaid principal balance plus accrued interest thereon. (1973 Ed., § 45-1910; Mar. 3, 1979, D.C. Law 2-135, § 303, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(l)-(n), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.      **Legislative history of Law 4-28.** — See note to § 45-2102.

## § 45-2124. Loans to mortgage lenders; requirements for reinvestment of proceeds by lender.

(a) *Authorization.* — Except as provided in subsection (a-1) of this section, the Agency may make loans to mortgage lenders pursuant to an agreement by

the recipient to reinvest an amount equal to or greater than the proceeds in accordance with the provisions of subsection (b) of this section.

(a-1) The Agency shall allocate 30% of the funds available in the Single Family Mortgage Purchase Program for at least 90 days from the beginning of the mortgage origination period to provide first-lien mortgage financing to those employees of the government of the District of Columbia who qualify for deferred payment and matching funds and who participate in the District of Columbia Government Employer-Assisted Housing Program pursuant to the District of Columbia Government Employer-Assisted Housing Act of 1992, and who otherwise qualify for HFA financing.

(b) *Program requirements.* — (1) The Agency will require that the recipient reinvest the proceeds as follows, including any combination thereof:

(A) In the case of loans to sponsors for rental housing projects, in accordance with the requirements of § 45-2122(b);

(B) In the case of loans to sponsors for homeownership projects in accordance with the requirements of § 45-2122(c); or

(C) In the case of other owner-occupied housing, in loans to individual low or moderate income persons for mortgage loans, where the housing units are or are to be owner-occupied.

(2) The Agency shall require that loans made in fulfillment of the reinvestment requirements of subsection (a-1) of this section and paragraph (1) of this subsection are at interest rates which insure that the borrower will benefit, to the maximum extent feasible, from the below market interest cost of the Agency bond and note proceeds used to make the loans to or to purchase the securities from the lender under subsection (a) of this section. (1973 Ed., § 45-1911; Mar. 3, 1979, D.C. Law 2-135, § 304, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(o), 28 DCR 2848; June 11, 1992, D.C. Law 9-118, § 7, 39 DCR 3189; Apr. 18, 1996, D.C. Law 11-110, § 49, 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 validated a previously made insertion of “of this section” following “subsection (a-1)” in (a).

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**Legislative history of Law 9-118.** — Law 9-118, the “District of Columbia Government Employer-Assisted Housing Act of 1992,” was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for

its review. D.C. Law 9-118 became effective on June 11, 1992.

**Legislative history of Law 11-110.** — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996 respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**References in text.** — The “District of Columbia Government Employer-Assisted Housing Act of 1992,” referred to in (a-1), is D.C. Law 9-118.

## § 45-2125. Supportive programs; Mortgage Loan Guarantee Fund.

(a) *Rent or interest subsidy.* — The Agency may establish or administer any rent subsidy or homeownership mortgage interest subsidy program to the

extent that funds are made available for that purpose by this chapter or by any other source where, by reason of other income or payment by any department, agency or instrumentality of the United States or of the District, the Agency has determined the program can be utilized without jeopardizing the economic stability of housing projects being financed.

(b) *Housing rehabilitation.* — The Agency may establish or administer a housing rehabilitation program for the purpose of providing loans to eligible persons for rehabilitation of residential housing. These loans shall be secured to the satisfaction of the Agency.

(c) *Home purchase assistance.* — The Agency may establish or administer a home purchase assistance program from any excess monies generated from the operation of the Agency, appropriated from any source, or otherwise made available to assist prospective home purchasers to meet down payment requirements for obtaining mortgage financing for residential units.

(d) *Counseling.* — The Agency may establish or may contract with private or public groups and organizations to provide counseling programs for low and moderate income families who may be participating in rental or homeownership assistance activities.

(e) *Mortgage Loan Guarantee Fund.* — The Agency may establish and maintain a special fund called the "Mortgage Loan Guarantee Fund" into which shall be deposited monies: (1) as may be appropriated by the District for the purpose of the Fund; and (2) as the Agency determines to deposit. Monies in the Mortgage Loan Guarantee Fund may be used by the Agency to guarantee or insure mortgage loans according to criteria established by the Agency. (1973 Ed., § 45-1912; Mar. 3, 1979, D.C. Law 2-135, § 305, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

## § 45-2126. Agency authorized to make rules and regulations; scope; guidelines.

(a) The Agency shall make rules and regulations governing all authorized activities including, but not limited to, the following:

(1) Procedures for the submission of requests or the invitation of proposals for the purchase and sale of loans and the making of loans;

(2) The number of dwelling units, location of the units and other characteristics of residential housing to be financed by the Agency;

(3) Rates, charges and other terms and conditions of originating or servicing loans, in order to protect against a realization of an excessive financial return or benefit by the originator or servicer;

(4) The rent levels and the sales prices, including downpayment requirements, and the allowable adjustments in rent levels and sales prices, of residential units financed by the Agency, in accordance with the program requirements of this chapter;

(5) The type and amount of collateral or security to be provided by borrowers to assure repayment of loans made or purchased by the Agency;

(6) The type of collateral, payment bonds, performance bonds, or other security to be provided for construction loans;

(7) The nature and amounts of fees to be charged by the Agency to provide for expenses and reserves of the Agency; and

(8) Any other matters related to the duties or exercise of powers under this chapter.

(b) The Agency's rules and regulations shall be consistent with the following:

(1) Loans made for residential housing may be prepaid only with the consent of the Agency, which may impose a penalty for prepayment. In the case of housing projects assisted by the Agency, refinancing shall be allowed by the Agency only where refinancing will not abrogate the rights of bondholders or noteholders and will not change the material purpose for which the project was originally assisted;

(2) Preference for assistance under this chapter shall be given to eligible persons displaced as a result of Agency action. Such preference shall include individual notification and the right of first refusal to rent or purchase the unit previously occupied by the displaced person or a comparable unit in other housing projects assisted by the Agency;

(3) Specific loan terms for each program of assistance shall be adopted by the Agency in its rules and regulations, pursuant to the provisions of this chapter:

(A) Such terms shall be consistent with the objective of maximizing the availability of housing opportunities to low and moderate income persons. The Agency shall insure that such terms are properly implemented by participating mortgage lenders and shall provide and implement a procedure by which loan decisions can be monitored, reviewed, or appealed;

(B) Where a mortgage lender makes residential loans to low or moderate income persons with funds received through Forward Commitment Mortgage Purchase, mortgage purchase, security purchase and loan to lender programs under this chapter, the Agency shall require that the loans are made with terms which meet conditions set out by the Agency, including the following:

(i) Loan terms, criteria and requirements shall be consistent with the objective of providing greater opportunities for home ownership for low and moderate income persons to whom mortgage financing has generally not been available through private lenders; and

(ii) When the projected ratio of monthly payments to family income of a loan applicant exceeds 25%, the mortgage lender shall not disqualify the loan application on that basis alone;

(4) In the case of federal or District programs in which the Agency may participate, the provisions of this chapter and Agency rules shall apply unless there is a conflict with such a federal or District program;

(5) The Agency shall require that occupancy of all housing financed or otherwise assisted under this chapter be open to all persons, and that such mortgagors, contractors and subcontractors engaged in the construction, rehabilitation, sale or rental of such housing, shall provide equal opportunity

for employment without discrimination, in accordance with applicable District and federal laws including, but not limited to the Human Rights Act of 1977 (D.C. Code § 1-2501 et seq.). All contracting and procurement of the Agency and of housing financed or otherwise assisted under this chapter shall be in accordance with applicable District and federal laws including, but not limited to, the Minority Contracting Act of 1976 (D.C. Code § 1-1141 et seq.). (1973 Ed., § 45-1913; Mar. 3, 1979, D.C. Law 2-135, § 306, 25 DCR 5008.)

**Section references.** — This section is referred to in § 45-2152.

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2127. Technical assistance or loans for consultant services; conversion of loan to grant or consideration as development cost.

(a) The Agency may provide sponsors with technical assistance or loans for consultant services which may be required in the organization, planning, or operation of residential housing projects for eligible persons. The Agency may require the sponsor to provide a portion of the value of technical assistance and consultant services in matching funds.

(b) The Agency may, in its discretion, convert a loan to a nonprofit sponsor, or any portion thereof, to a nonobligatory grant, or may consider the value of the loan as a development cost subsumed in any mortgage financing provided to the nonprofit sponsor. (1973 Ed., § 45-1914; Mar. 3, 1979, D.C. Law 2-135, § 307, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2128. Exemption from rent control.

(a) Housing projects assisted by the Agency or through the auspices of the Agency under the provisions of this chapter shall be exempt from the provisions of Chapter 25 of this title.

(b) The Agency shall establish, by rulemaking, procedures for evictions and protections from retaliatory action for tenants of housing projects exempted from Chapter 25 of this title under subsection (a) of this section. Such procedures and protections shall be in accordance with subchapter V of Chapter 25 of this title.

(c) The Agency shall establish, by rulemaking, conditions and procedures for relocation assistance to tenants displaced from housing projects which are exempted from Chapter 25 of this title under subsection (a) of this section. Such conditions and procedures shall be in accordance with subchapter VII of Chapter 25 of this title.

(d) Each owner of a rental accommodation subject to the provisions of this chapter shall file simultaneously with the Agency and with the Rental Housing Commission an exemption statement which shall contain the following information:

- (1) The actual rent for each rental unit in the accommodation, the services included, and the facilities and charges therefor;
  - (2) The number of bedrooms in the rental accommodation; and
  - (3) A list of any outstanding violations of the Housing Regulations of the District of Columbia, issued August 11, 1955 (C.O. 55-1503), applicable to such accommodation.
- (e) Tenants of housing projects exempted by this chapter from Chapter 25 of this title, who, except for such exemption, would be eligible for rent supplements under subchapter III of Chapter 25 of this title, shall have the same rights to such supplements as tenants residing in a project subject to Chapter 25 of this title.
- (f) Prior to the execution of a lease or other rental agreement, a prospective tenant of any unit shall receive notice in writing advising him or her that rent increases for the accommodation are not regulated by Chapter 25 of this title. (1973 Ed., § 45-1915; Mar. 3, 1979, D.C. Law 2-135, § 308, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(p), 28 DCR 2848; Oct. 5, 1985, D.C. Law 6-44, § 2(f), 32 DCR 4487.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**Legislative history of Law 6-44.** — See note to § 45-2117.

#### *Subchapter IV. Financial Affairs of the Agency.*

### **§ 45-2131. Receipt of funds; disposition thereof.**

In connection with the exercise of its powers under this chapter, the Agency may receive gifts, grants, appropriations, loans, bond or note proceeds, or other funds, property or other assets, or any other type of financial assistance from any federal, District, private, or other source and may utilize such funds as determined by rules issued by the Board. Such rules shall also govern the establishment of, administration of, and expenditure from, reserve funds. The source of such funds and the use thereof shall be a part of the annual reporting requirement of § 45-2153. The rules shall be submitted to the Chairman of the Council for review on the same day as the rules are transmitted for publication to the District of Columbia Register. (1973 Ed., § 45-1916; Mar. 3, 1979, D.C. Law 2-135, § 401, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(q), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**§ 45-2132. Issuance of bonds and notes; renewals and refunds; deemed obligations of Agency; negotiable instruments; director, employer, or agent not personally liable.**

(a) *Borrowing authority.* — The Agency may by resolution authorize the issuance of bonds and notes or other obligations (hereinafter "bonds or notes") for undertakings authorized by this chapter. In addition, the Agency may issue notes to renew notes and bonds to pay notes, including the interest thereon. Whenever expedient, the Agency may refund bonds by the issuance of new bonds, regardless of whether the bonds to be refunded have matured. The Agency may also issue bonds for a combination of refund, renewal and financing programs authorized by this chapter.

(b) *Obligations of the Agency.* — Except as expressly provided otherwise by the Agency, bonds and notes of the Agency are obligations payable solely from revenues derived from the respective projects which such obligations are issued to finance. The Agency may expressly provide additional security by pledge or contribution from any source in accordance with § 47-327.

(c) *Negotiable instruments.* — Regardless of their form or character, bonds and notes of the Agency are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia (D.C. Code § 28:1-101 et seq.), subject only to the provisions of the bonds and notes for registration.

(d) *No personal liability.* — No director, employee or agent of the Agency is personally liable solely because a bond or note is issued.

(e) *Compliance required.* — The issuance and performance of bonds, notes, and other obligations by the Agency as contemplated in this chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to Chapter 15 of Title 1 and, except as otherwise provided in the chapter, shall not be required to comply with the requirements of any legislation passed by the Council. No notice (except as provided in this section), proceeding, consent, or approval shall be required for the issuance or performance of any bond, note, or other obligation of the Agency or the execution of any instrument relating thereto or to the security therefor, except as provided in this chapter or in rules and regulations promulgated by the Agency. Notice of the adoption of a bond resolution shall be given to the Mayor and the Council before the adoption of such resolution. (1973 Ed., § 45-1917; Mar. 3, 1979, D.C. Law 2-135, § 402, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(r), 28 DCR 2848.)

**Section references.** — This section is referred to in § 45-2151.

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

**§ 45-2133. Terms for sale of bonds and notes; effect of resolution authorizing sale; pledge of agency and lien thereon; signature valid after office-holder vacates.**

(a) *General.* — The Agency may stipulate by resolution the terms for sale of its bonds and notes in accordance with this chapter, including the following:

- (1) The date a bond or note bears;
- (2) The date a bond or note matures; provided, that notes shall not mature later than 10 years from the date of original issuance and bonds shall not mature later than 50 years from the date of original issuance;
- (3) Whether bonds are issued as serial bonds, as term bonds, or as a combination of the 2;
- (4) The denomination;
- (5) The interest rate or rates, or variable rate or rates changing from time to time in accordance with a base or formula;
- (6) The registration privileges;
- (7) The medium and method for payment; and
- (8) The terms of redemption.

(b) *Public or private sale.* — The Agency may sell its bonds or notes at public or private sale and may determine the price for sale.

(c) *Additional provisions part of contract.* — If the resolution authorizing the sale of bonds or notes contains any of the provisions listed below, the provisions must also be part of the contract with holders of the bonds or notes. The provisions in the resolution may include the following:

- (1) The custody, security, expenditure or application of proceeds of the sale of bonds or notes of the Agency (hereinafter “proceeds”), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;
- (2) A pledge of revenue from projects of the Agency to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;
- (3) A pledge of assets of the Agency, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds or notes;
- (4) Use of gross income from mortgages owned by the Agency and payment on principal of mortgages owned by the Agency;
- (5) Use of reserves or sinking funds;
- (6) Use of proceeds from sale of bonds or notes and a pledge of proceeds to secure payment;
- (7) Limitation of issuance of additional bonds or notes, including terms of issuance and security, and the refunding of outstanding or other bonds or notes;
- (8) Procedure for amendment or abrogation of a contract with holders of bonds or notes, the amount of bonds or notes, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Vesting in a trustee property, power and duties, which may include the power and duties of a trustee appointed by holders of bonds or notes under this chapter;

(10) Limitation or abrogation of the right of holders of bonds or notes to appoint a trustee under this chapter;

(11) Defining the nature of default in the obligations of the Agency to the holders of bonds or notes and providing rights and remedies of holders in the event of default, including the right to appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) Any other provisions of like or different character which affect the security of holders of bonds or notes.

(d) *Pledge of the Agency.* — A pledge of the Agency is binding from the time it is made. Any funds or property pledged are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract or other claim against the Agency regardless of notice. Neither the resolution nor any other instrument creating a pledge need be recorded.

(e) *Signatures.* — The signature of any officer of the Agency which appears on a bond or note remains valid if that person ceases to hold that office. (1973 Ed., § 45-1918; Mar. 3, 1979, D.C. Law 2-135, § 403, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(s), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

#### **§ 45-2134. Trust indenture to secure bonds or notes; provisions protecting holders; expenses treated as operating expenses.**

(a) *Authority.* — The Agency may secure bonds or notes by a trust indenture between the Agency and a corporate trustee which has the power of a trust company within the District.

(b) *Provisions.* — A trust indenture of the Agency may contain provisions for protecting and enforcing the rights and remedies of holders of bonds or notes in accordance with the provisions of the resolution authorizing the sale of bonds or notes.

(c) *Expenses.* — The Agency may treat expenses incurred in carrying out a trust indenture as operating expenses. (1973 Ed., § 45-1919; Mar. 3, 1979, D.C. Law 2-135, § 404, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

#### **§ 45-2135. Agency's purchase of its own bonds and notes; maximum price.**

Subject to preexisting agreements with the holders of bonds or notes, the Agency may purchase its own bonds or notes which may then be cancelled. The price cannot exceed the following limits:

(1) If the bonds or notes are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds or notes are not redeemable, the price cannot exceed the redemption price applicable on the 1st date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date. (1973 Ed., § 45-1920; Mar. 3, 1979, D.C. Law 2-135, § 405, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

## § 45-2136. Special or reserve funds; management and investment of funds.

The Agency may establish special or reserve funds in furtherance of its authority under this chapter. Notwithstanding other provisions of District law and subject to agreements with holders of bonds and notes, the Agency shall manage its own funds, and may invest funds not required for disbursement in a manner the Agency determines prudent and in accordance with § 45-2143. (1973 Ed., § 45-1921; Mar. 3, 1979, D.C. Law 2-135, § 406, 25 DCR 5008; Mar. 8, 1984, D.C. Law 5-50, § 3(a), 30 DCR 5916; Mar. 16, 1993, D.C. Law 9-185, § 3(a), 39 DCR 8221; June 28, 1994, D.C. Law 10-134, § 4(a), 41 DCR 2597; Apr. 18, 1996, D.C. Law 11-110, § 62, 43 DCR 530.)

**Cross references.** — As to limitation on investment of District of Columbia employees retirement funds, see § 1-721.

**Section references.** — This section is referred to in § 45-2143.

**Effect of amendments.** — D.C. Law 10-134, as amended by § 62 of D.C. Law 11-110, substituted “with § 45-2143” for “with §§ 45-2142 and 45-2143” at the end of the second sentence.

D.C. Law 11-110 made a technical correction to D.C. Law 10-134, which had amended this section.

**Temporary amendments of section.** — Section 4(a) of D.C. Law 10-75 amended this section to read as follows: “The Agency may establish special or reserve funds in furtherance of its authority under this chapter. Notwithstanding other provisions of district law and subject to agreements with holders of bonds and notes, the Agency shall manage its own funds, and may invest funds not required for disbursement in a manner the Agency determines prudent and in accordance with § 45-2143.”

Section 8(b) of D.C. Law 10-75 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the South Africa Sanctions Repeal Act of 1993, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 4(a) of the

South Africa Sanctions Emergency Repeal Act of 1993 (D.C. Act 10-127, October 25, 1993, 40 DCR 7583) and § 4(a) of the South Africa Sanctions Congressional Recess Emergency Repeal Act of 1994 (D.C. Act 10-176, January 25, 1994, 41 DCR 512).

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 5-50.** — Law 5-50, the “Prohibition of the Investment of Public Funds in Financial Institutions and Companies Making Loans to or Doing Business with the Republic of South Africa or Namibia Act of 1983,” was introduced in Council and assigned Bill No. 5-18, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 6, 1983, and October 4, 1983, respectively. Signed by the Mayor on November 9, 1983, it was assigned Act No. 5-76 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-185.** — See note to § 45-2143.

**Legislative history of Law 10-75.** — D.C. Law 10-75, the “South Africa Sanctions Temporary Repeal Act of 1993,” was introduced in Council and assigned Bill No. 10-417. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 4, 1993, it was assigned Act No. 10-142 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-75 became effective March 8, 1994.

**Legislative history of Law 10-134.** — Law 10-134, the “South Africa Sanctions Repeal Act of 1994,” was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234

and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

**Legislative history of Law 11-110.** — See note to § 45-2124.

**Delegation of Authority Under D.C. Law 9-185, “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992.”** — See Mayor’s Order 93-76, June 16, 1993.

### § 45-2137. No limitation, alteration, or impairment of rights and remedies of bondholders and noteholders.

The District pledges to the holders of any bonds or notes issued under this chapter that the District will not limit or alter rights vested in the Agency to fulfill agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until the bonds and notes, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The Agency is authorized to include this pledge of the District in any agreement with the holders of bonds or notes. (1973 Ed., § 45-1922; Mar. 3, 1979, D.C. Law 2-135, § 407, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2138. Faith and credit and taxing power of District not pledged on obligation; statement thereto.

Obligations issued under the provisions of this chapter do not constitute an obligation of the District, but are payable solely from the revenues or assets of the Agency. Each obligation issued under this chapter must contain on its face a statement that the Agency is not obligated to pay principal or interest except from the revenues or assets pledged and that neither the faith and credit nor the taxing power of the District is pledged to the payment of the principal or interest on an obligation. (1973 Ed., § 45-1923; Mar. 3, 1979, D.C. Law 2-135, § 408, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2139. Bonds and notes as legal investments and securities.

The bonds and notes of the Agency are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking

institutions including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds and notes are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law. (1973 Ed., § 45-1924; Mar. 3, 1979, D.C. Law 2-135, § 409, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### **§ 45-2140. District tax exemptions; payments in lieu; exceptions.**

(a) Assets and income of the Agency are exempt from District taxation. The Agency may make, at its discretion, payment in lieu of taxation.

(b) Bonds and notes issued by the Agency and the interest thereon are exempt from District taxation except estate, inheritance, and gift taxes. (1973 Ed., § 45-1925; Mar. 3, 1979, D.C. Law 2-135, § 410, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### **§ 45-2141. Deposits; payments out of accounts; contracts involving monies held in trust or otherwise for payment of notes or bonds.**

(a) All monies of the Agency, except as otherwise authorized in this chapter, shall be deposited as soon as practicable in 1 or more separate accounts in financial institutions regulated or insured by a federal or District agency. Monies in these accounts shall be paid out on checks signed by the Executive Director or other authorized officers or employees of the Agency.

(b) Notwithstanding the provisions of this section, the Agency shall have power to contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any monies of the Agency and of any monies held in trust or otherwise for the payment of notes or bonds. Monies held in trust pursuant to a contract with holders of notes or bonds may be secured in the same manner as monies of the Agency. (1973 Ed., § 45-1926; Mar. 3, 1979, D.C. Law 2-135, § 411, 25 DCR 5008.)

**Section references.** — This section is referred to in §§ 45-2121, 45-2142, and 45-2143.

**Legislative history of Law 2-135.** — See note to § 45-2101.

**§ 45-2142. Investment of funds with financial institution or company doing business with Republic of South Africa.**

Repealed. June 28, 1994, D.C. Law 10-134, § 4(b), 41 DCR 2597.

**Legislative history of Law 10-75.** — See note to § 45-2136. **Legislative history of Law 10-134.** — See note to § 45-2136.

**§ 45-2143. Investment of funds with financial institution or company doing business with Northern Ireland.**

(a) For the purposes of this section, the term “agency funds” means all monies managed and all funds established pursuant to §§ 45-2136 and 45-2141.

(b)(1) Agency funds invested in stocks, securities, or other obligations of any institution or company doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland shall be invested to reflect advances to eliminate discrimination made by these institutions and companies pursuant to paragraph (2) of this subsection.

(2) The Mayor shall consider the following criteria, referred to as the MacBride Principles, to determine the advances to eliminate discrimination made by companies and institutions doing business in or with Northern Ireland or with agencies or instrumentalities of Northern Ireland:

(A) Increasing the representation of individuals from underrepresented religious groups on the work force, including managerial, supervisory, administrative, clerical, and technical jobs;

(B) Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work;

(C) Banning provocative religious or political emblems from the workplace;

(D) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups;

(E) Providing that layoff, recall, and termination procedures should not in practice favor particular religious groups;

(F) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religion or ethnic origin;

(G) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees;

(H) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement; and

(I) Appointing senior management staff members to oversee affirmative action efforts and setting up timetables to carry out affirmative action principles.

(3) On or before the 1st day of October of each year, the Mayor shall

determine the existence of affirmative action taken by all institutions and companies doing business in or with Northern Ireland, in which agency funds are or will be invested, in adhering to the MacBride Principles as enumerated in paragraph (2) of this subsection and provide an annual report of his or her findings for presentation to the Council, which report shall be made available for public inspection. (Mar. 3, 1979, D.C. Law 2-135, § 413, as added Mar. 16, 1993, D.C. Law 9-185, § 3(b), 39 DCR 8221.)

**Legislative history of Law 9-185.** — Law 9-185, the “Public Funds Investment Policy in Financial Institutions and Companies Making Loans to or Doing Business with Northern Ireland Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-311, which was referred to the Committee on Con-

sumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-350 and transmitted to both Houses of Congress for its review. D.C. Law 9-185 became effective on March 16, 1993.

### *Subchapter V. Public Accountability.*

## **§ 45-2151. Agency actions governed by Administrative Procedure Act.**

Except as provided in subsection (e) of § 45-2132, all actions of the Agency shall be conducted in accordance with the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.). (1973 Ed., § 45-1927; Mar. 3, 1979, D.C. Law 2-135, § 501, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(t), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

**Legislative history of Law 4-28.** — See note to § 45-2102.

## **§ 45-2152. Advisory Committee.**

(a) The Board of Directors of the Agency shall, prior to the adoption of rules and regulations pursuant to § 45-2126, appoint a District of Columbia Housing Finance Agency Advisory Committee (“Advisory Committee”) of 27 persons which must include individuals with experience in the areas including, but not limited to, mortgage banking, real estate, finance, architecture, federal and District housing programs, construction and rehabilitation, consumer affairs, community organization, small business programs, and commercial development. Eight members shall be selected by the advisory neighborhood commissioners, 1 from each ward. The Chairman of the Council and the Chairperson of the Committee on Housing and Economic Development shall select 1 member each to serve as members on the Advisory Committee. The Advisory Committee shall advise the Agency with respect to the development of its rules and regulations, its plans and programs, and any other matters designated by the Board.

(b) Of the 17 public members, the 8 ward members, and the 2 legislative members, initially appointed to the Advisory Committee, 9 public members, 4 ward members and 1 legislative member shall be appointed to terms of office expiring in 1 year and the remaining 8 public members, 4 ward members, and

1 legislative member to terms of office expiring in 3 years, after which their successors shall be appointed to terms of office of 4 years each. The removal of a Committee member and the filling of vacancies shall be governed by Agency rules and regulations for the Advisory Committee. (1973 Ed., § 45-1928; Mar. 3, 1979, D.C. Law 2-135, § 502, 25 DCR 5008; Aug. 5, 1981, D.C. Law 4-28, § 2(u), 28 DCR 2848.)

**Legislative history of Law 2-135.** — See note to § 45-2101.      **Legislative history of Law 4-28.** — See note to § 45-2102.

### § 45-2153. Annual report by Agency; contents.

The Agency shall, within 90 days of the end of each fiscal year, submit an annual report of its activities for the preceding year to the Mayor, the Council, and the Advisory Board. The report shall set forth a complete operating financial statement of the Agency during the fiscal year it covers, its housing program operations and accomplishments, its plans for the succeeding fiscal year, and its recommendations for needed action on the part of the Mayor or Council, with respect to the purposes of the Agency. (1973 Ed., § 45-1929; Mar. 3, 1979, D.C. Law 2-135, § 503, 25 DCR 5008.)

**Section references.** — This section is referred to in § 45-2131.

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2154. Agency to arrange annual audit; transmission to Mayor and Council.

The Agency shall contract at least once each year with an independent certified public accountant to audit the books and accounts of the Agency. The Agency shall transmit the audit to the Mayor and Council within 10 days of receipt. (1973 Ed., § 45-1930; Mar. 3, 1979, D.C. Law 2-135, § 504, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

## *Subchapter VI. Miscellaneous Provisions.*

### § 45-2161. Liberal construction of chapter.

The provisions of this chapter are to be liberally construed so as to effectuate those powers which are specifically enumerated. (1973 Ed., § 45-1931; Mar. 3, 1979, D.C. Law 2-135, § 601, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### § 45-2162. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or provision of this chapter shall be unconstitutional or ineffective, in whole or in

part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective, and no other section, subsection, subdivision, paragraph, sentence, clause, or provision shall on account thereof be deemed invalid or ineffective. (1973 Ed., § 45-1932; Mar. 3, 1979, D.C. Law 2-135, § 602, 25 DCR 5008.)

**Legislative history of Law 2-135.** — See note to § 45-2101.

### **§ 45-2163. Allocation of bond issuing authority.**

All of the authority of the District government to issue qualified mortgage bonds in each calendar year under the Mortgage Subsidy Bond Tax Act of 1980 (26 U.S.C. § 1100 et seq.) as it may be amended from time to time with respect to the District is allocated to the Agency. (Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

**Legislative history of Law 4-28.** — See note to § 45-2102. under 26 U.S.C. §§ 1, 103A, and 141, not as 26 U.S.C. § 1100 et seq.

**References in text.** — The Mortgage Subsidy Bond Tax Act of 1980 is codified as notes

### **§ 45-2164. Disposition of assets on dissolution.**

If the Agency is dissolved by repeal of this chapter, or ceases to exist for any other reason, all of its assets (including, but not limited to, cash, accounts receivable, reserve funds, real or personal property, and contract and other rights) shall automatically be assigned to and become the property of the District. (Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

**Legislative history of Law 4-28.** — See note to § 45-2102.

### **§ 45-2165. Laws or acts referred to in this chapter.**

Each law or act of the District identified in this chapter shall include any and all amendments thereto made from time to time, and shall include any and all superseding laws and acts, unless the superseding law or act expressly provides otherwise. (Aug. 5, 1981, D.C. Law 4-28, § 2(w), 28 DCR 2848.)

**Legislative history of Law 4-28.** — See note to § 45-2102.

## CHAPTER 22. HOME PURCHASE ASSISTANCE FUND.

Sec.

- 45-2201. Establishment; purpose; unexpended balance.  
 45-2202. Deposits to credit of Fund.  
 45-2203. Availability; use prescribed by Mayor.  
 45-2204. Promulgation of rules and regula-

Sec.

- tions by Mayor; review by Council; contents of loan agreements.  
 45-2205. Annual audit; report to Congress and Council; appropriations.

**§ 45-2201. Establishment; purpose; unexpended balance.**

There is hereby established in the District of Columbia and there is authorized, and accounted for in the General Fund as a separate revenue source allocable to provide financial assistance to the residents of the District of Columbia of lower and moderate incomes and District of Columbia government employees participating in the District of Columbia Employer-Assisted Housing Program for the purposes of enabling them to purchase decent, safe, and sanitary homes in the District of Columbia. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Mayor. (1973 Ed., § 45-1801; Sept. 12, 1978, D.C. Law 2-103, § 2, 25 DCR 1977; June 14, 1980, D.C. Law 3-70, § 7(1), 27 DCR 1776; Oct. 24, 1981, D.C. Law 4-44, § 2(b), 28 DCR 4265; Sept. 23, 1986, D.C. Law 6-151, § 2(a), 33 DCR 4783; June 11, 1992, D.C. Law 9-118, § 8(a), 39 DCR 3189.)

**Legislative history of Law 2-103.** — Law 2-103, the “Home Purchase Assistance Fund Act of 1978,” was introduced in Council and assigned Bill No. 2-316, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 13, 1978, and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-214 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 3-70.** — Law 3-70, the “District of Columbia Fund Accounting Act of 1980,” was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980, and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-44.** — Law 4-44, the “Home Purchase and First Right Assistance Fund Act Amendments Act of 1981,” was introduced in Council and assigned Bill No. 4-170, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respec-

tively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-79 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-151.** — Law 6-151, the “Home Purchase Assistance Fund Act Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-395, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 24, 1986, and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-193 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-118.** — Law 9-118, the “District of Columbia Government Employer-Assisted Housing Act of 1992,” was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for its review. D.C. Law 9-118 became effective on June 11, 1992.

**Cited** in Blagden Alley Ass'n v. District of Columbia Zoning Comm'n, App. D.C., 590 A.2d 139 (1991).

**§ 45-2202. Deposits to credit of Fund.**

There shall be deposited to the credit of the Fund such amounts as may be appropriated pursuant to this chapter; grants and gifts from public and private sources to the Fund or to the District of Columbia for the purposes of the Fund; repayments of principal and any interest on loans provided from the Fund; proceeds realized from the liquidation of any security interests held by the District of Columbia under the terms of any assistance provided from the Fund; interest earned from the deposit or investment of monies of the Fund; repayments of principal and any interest on loans provided under the District of Columbia Government Employer-Assisted Housing Program; and all other revenues, receipts and fees of whatever nature derived from the operation of the Fund. (1973 Ed., § 45-1802; Sept. 12, 1978, D.C. Law 2-103, § 3, 25 DCR 1977; June 11, 1992, D.C. Law 9-118, § 8(b), 39 DCR 3189.)

**Legislative history of Law 2-103.** — See note to § 45-2201. **Legislative history of Law 9-118.** — See note to § 45-2201.

**§ 45-2203. Availability; use prescribed by Mayor.**

The Fund shall be available without fiscal year limitation for the purpose of providing financial assistance for down payments or interim financing to recipients for the purpose of purchasing or securing housing, including, but not limited to, single family homes, condominium units, or occupancy rights to cooperative housing in the District of Columbia as their principal place of residence and District of Columbia government employees eligible under the District of Columbia Employer-Assisted Housing Program, to purchase a home in the District of Columbia. Under terms and conditions prescribed by the Mayor of the District of Columbia (“Mayor”), the Fund shall be used for making loans and providing other forms of financial assistance. The assistance provided pursuant to the Fund may be used in conjunction with other available home assistance programs. (1973 Ed., § 45-1803; Sept. 12, 1978, D.C. Law 2-103, § 4, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(c), 28 DCR 4265; June 11, 1992, D.C. Law 9-118, § 8(c), 39 DCR 3189.)

**Legislative history of Law 2-103.** — See note to § 45-2201. **Legislative history of Law 9-118.** — See note to § 45-2201.

**Legislative history of Law 4-44.** — See note to § 45-2201.

**§ 45-2204. Promulgation of rules and regulations by Mayor; review by Council; contents of loan agreements.**

(a) The Mayor is authorized to promulgate rules and regulations to govern the operation of the Fund, including but not limited to, rules and regulations establishing standards for determining the eligibility and selection of applicants; procedures for applying for assistance and for notifying applicants (including the development of appropriate forms); and criteria for determining the terms and conditions under which loans or other forms of financial

assistance may be made from the Fund which, among things, shall reflect the ability of the recipient to pay and may provide for the deferred payment or forgiveness of loans. The rules and regulations issued by the Mayor for the purpose of implementing the provisions of this chapter shall be submitted by the Mayor to the Council of the District of Columbia for a 45 calendar day review period, excluding days of Council recess. No such rules or regulations shall take effect until the end of the 45 calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council, and then only if during such period, the Council does not adopt a resolution disapproving such rules and regulations in whole or in part.

(b) Any loan agreement entered into pursuant to such rules and regulations shall provide that:

(1) All applicants for and recipients of financial assistance from the Fund shall be tenant organizations (as defined in § 45-1603(18)) or households who are residents of the District of Columbia seeking to purchase housing as a primary residence within the District of Columbia including, but not limited to, single family homes, condominium units, or occupancy rights to cooperative housing. For purposes of this section, the term "household" means either an individual residing in a housing unit in the District of Columbia, or 2 or more persons who reside together in a housing unit in the District of Columbia. Priority in the allocation of assistance under the Fund shall be given to lower income, elderly, handicapped, disabled, or displaced applicants; and

(2) If the home purchased ceases to be the primary residence of the recipient of financial assistance from the Fund, the payments to such Fund by the recipient shall be accelerated on terms and conditions prescribed by the Mayor; provided, that such obligation shall not be inconsistent with the applicable law or regulations of any federal home purchase assistance program made available to the recipient.

(3) Applicants who are residents of the District of Columbia shall include, for purposes of the Fund, employees living outside the District of Columbia who are subject to the residency requirements of District Columbia law, provided that an applicant meets all other eligibility requirements of the Fund and will be a first-time homebuyer or real property purchaser. (1973 Ed., § 45-1804; Sept. 12, 1978, D.C. Law 2-103, § 5, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(d), 28 DCR 4265; Sept. 23, 1986, D.C. Law 6-151, § 2(b), 33 DCR 4783.)

**Regulatory Amendments to the Home Purchase Assistance Program Approval Resolution of 1995.** — Pursuant to Proposed Resolution 11-198, deemed approved October 9, 1995, Council reviewed, provided comments, and approved amendments to the regulations implementing the Home Purchase Assistance Program.

**Section references.** — This section is referred to in § 47-3502.

**Legislative history of Law 2-103.** — See note to § 45-2201.

**Legislative history of Law 4-44.** — See note to § 45-2201.

**Legislative history of Law 6-151.** — See note to § 45-2201.

**Showing held insufficient for review of denial of Department of Housing and Community Development housing loan award.** — See *Rones v. District of Columbia Dep't of Hous. & Community Dev.*, App. D.C., 500 A.2d 998 (1985).

**§ 45-2205. Annual audit; report to Congress and Council; appropriations.**

(a) An annual audit of the operations of the Fund shall be conducted by the Office of the Inspector General of the District of Columbia.

(b) Not later than 6 months after the end of each fiscal year, the Mayor shall submit to the Congress of the United States and to the Council of the District of Columbia a report of the financial condition of the Fund and the results of the operations for such fiscal year.

(c) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year, and there is authorized to be appropriated annually, such amounts out of the revenues of the District of Columbia as may be required for the Fund. (1973 Ed., § 45-1805; Sept. 12, 1978, D.C. Law 2-103, § 6, 25 DCR 1977; Oct. 24, 1981, D.C. Law 4-44, § 2(e), 28 DCR 4265.)

**Legislative history of Law 2-103.** — See note to § 45-2201.

**Legislative history of Law 4-44.** — See note to § 45-2201.

**Office of Internal Audits and Inspections abolished.** — The District of Columbia Office

of Internal Audits and Inspections was replaced by Mayor's Order 79-7, dated January 2, 1979, and Mayor's Order 79-224, dated September 24, 1979, which Orders established the Office of the Inspection General of the District of Columbia.

## CHAPTER 22A. GOVERNMENT EMPLOYER-ASSISTED HOUSING.

Sec.	Sec.
45-2221. Definitions.	45-2225. Deferred payment loan.
45-2222. Establishment.	45-2226. Assistance available for Metropolitan police officers.
45-2223. Eligibility.	
45-2224. Employee savings; District government contribution.	

### § 45-2221. Definitions.

For the purposes of this chapter, the term:

- (1) "Agency" means the District of Columbia Housing Finance Agency.
- (2) "Deferred payment loan" means funds made available to eligible participants in the program by the District to assist with the purchase of housing units and for which payment of the principal is deferred until the property is sold, transferred, or otherwise ceases to be the principal residence of the participant.
- (3) "Department" means the District of Columbia Department of Housing and Community Development.
- (4) "First-time homebuyer" means a purchaser who has no ownership interest in a principal residence at any time during the 3-year period ending on the date of the application for assistance, but includes an applicant who has divorced or separated during the 3-year period where a formal settlement did not convey an ownership interest in a principal residence which had been jointly owned.
- (5) "Household" means all of the persons living in a housing unit.
- (6) "Housing unit" means any room or group of rooms forming a single-family residential unit, including, but not limit to: a semi-detached condominium, cooperative, or semi-detached or detached home, that is used or intended to be used for living, sleeping, and the preparation and eating of meals by human occupants.
- (7) "Matching contribution" means those funds made available to eligible participants in the program by the District to assist the participants in saving towards a downpayment. (June 11, 1992, D.C. Law 9-118, § 2, 39 DCR 3189.)

**Legislative history of Law 9-118.** — Law 9-118, the "District of Columbia Government Employer-Assisted Housing Act of 1992," was introduced in Council and assigned Bill No. 9-210, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-192 and transmitted to both Houses of Congress for its review. D.C. Law 9-118 became effective on June 11, 1992.

**Mayor authorized to issue rules.** — Section 9 of D.C. Law 9-118 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules within 90 days after June 11, 1992, to implement the provisions of this act.

Section 8(c) of D.C. Law 10-70 added § 6b to D.C. Law 9-118, which provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules within 90 days after February 23, 1994 to implement the provisions of the act. The rules shall include, but not be limited to, the following:

(1) An application procedure for the Metropolitan Police Housing Assistance Program; and

(2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

**Delegation of Authority Under D.C. Law 9-118, the District of Columbia Govern-**

ment Employer-Assisted Housing Act of 1992. — See Mayor's Order 92-118, October 6, 1992.

**District of Columbia Government Employer-Assisted Housing Act Rulemaking**

**Approval Resolution of 1992.** — Pursuant to Resolution 9-358, effective December 11, 1992, the Council approved rules to carry out the purposes of the District of Columbia Government Employer-Assisted Housing Act of 1992.

## § 45-2222. Establishment.

There is established within the District of Columbia Department of Housing and Community Development a District of Columbia Government Employer-Assisted Housing Program to assist District of Columbia ("District") government employees to become homeowners in the District.

The program shall include:

- (1) A District contribution towards a downpayment;
- (2) A deferred payment loan of up to \$10,000;
- (3) Housing Finance Agency single-family mortgage financing for qualified applicants; and
- (4) Property tax and income tax credits for Metropolitan police officers. (June 11, 1992, D.C. Law 9-118, § 3, 39 DCR 3189; Oct. 8, 1993, D.C. Law 10-63, § 6(a), 40 DCR 7344; Feb. 23, 1993, D.C. Law 10-70, § 8(a), 40 DCR 7575.)

**Legislative history of Law 9-118.** — See note to § 45-2221.

**Legislative history of Law 10-63.** — See note to § 45-2226.

**Legislative history of Law 10-70.** — See note to § 45-2226.

## § 45-2223. Eligibility.

(a) An applicant shall be eligible for the District of Columbia Government Employer-Assisted Housing Program if the applicant is:

- (1) A District of Columbia government employee; and
- (2) A first-time homebuyer in the District of Columbia.

(b) No more than 1 member of a household shall be eligible for this program. (June 11, 1992, D.C. Law 9-118, § 4, 39 DCR 3189.)

**Legislative history of Law 9-118.** — See note to § 45-2221.

## § 45-2224. Employee savings; District government contribution.

(a) Each participant in the District of Columbia Government Employer-Assisted Housing Program shall be required to save an agreed upon amount, as set forth in this section, which shall be applied toward the downpayment and closing costs for the housing unit. Each participant shall enter into a housing allowance agreement ("Agreement") with the Department. The Agreement shall set forth the following items:

- (1) The amount to be saved by the employee and the period of time during which the savings shall be accomplished;

(2) A provision for amendment or termination of the Agreement prior to settlement of the Agreement;

(3) A penalty for withdrawal of funds or termination of the Agreement prior to settlement of the loan;

(4) A procedure for refund to the District of the total amount of the value of matching funds contributed by the District on behalf of a participant who has withdrawn from the Agreement, terminated the Agreement, or otherwise failed to purchase the housing unit;

(5) The total amount of the value of matching funds to be contributed by the District;

(6) The requirement that the funds provided by the District shall be used only for the purchase of a housing unit that shall be the principal residence of the participant; and

(7) Any other item that the Department deems necessary.

(b) For each participant in the District of Columbia Government Employer-Assisted Housing Program who sets aside \$2500 under an Agreement with the District, the District shall obligate \$500 in the Financial Management System ("FMS"). The District shall match succeeding participant saving increments of \$2500 with a \$500 obligation in the FMS until the District obligation totals \$1500. Matching contributions by the District shall not exceed \$1500 for any individual participant. The District shall disburse its cash contribution at the time of settlement.

(c) The Mayor shall establish a procedure to allow a participant in the District of Columbia Government Employer-Assisted Housing Program to save the target amount of money listed in the Agreement through a system of payroll deduction.

(d) An applicant who has saved towards a downpayment prior to entering the program shall also be eligible for the matching contribution upon entering into a housing allowance agreement with the Department. (June 11, 1992, D.C. Law 9-118, § 5, 39 DCR 3189.)

**Section references.** — This section is referred to in § 45-2225.

**Legislative history of Law 9-118.** — See note to § 45-2221.

## § 45-2225. Deferred payment loan.

(a) In addition to the assistance provided in § 45-2224(b), the Department shall make available to each participant a deferred payment loan of up to \$10,000 to provide financial assistance for the purchase of a housing unit. The deferred payment loan shall be available only if the housing unit shall be the principal residence of the participant.

(b) Payment of the principal may be deferred until the property is sold, transferred, or ceases to be the principal residence of the participant.

(c) Deferred payment loans may be secured by a second deed of trust on the subject property.

(d) The deferred payment loan may not be used in conjunction with the Home Purchase Assistance Program ("HPAP") established by Chapter 22 of this title.

(e) The Department may charge interest on the loan if the housing unit is sold within 5 years. (June 11, 1992, D.C. Law 9-118, § 6, 39 DCR 3180.)

**Legislative history of Law 9-118.** — See note to § 45-2221.

## § 45-2226. Assistance available for Metropolitan police officers.

(a) In addition to the assistance provided in § 45-2225 and § 45-2124(a-1), Metropolitan police officers who are first-time homebuyers in the District of Columbia shall be eligible for the following assistance:

- (1) A sliding-scale property tax credit as follows:
  - (A) An 80% property tax credit for the first year;
  - (B) A 60% property tax credit for the second year;
  - (C) A 40% property tax credit for the third year;
  - (D) A 20% property tax credit for the fourth year; and
  - (E) A 20% property tax credit for the fifth year.

(2) A \$2,000 income tax credit in the tax year the officer purchases his home and each of the 4 immediately succeeding tax years, provided the officer remains eligible for the tax credit. The credit shall not be prorated and any portion of the credit that is not utilized in a tax year shall not be carried forward, carried back, or refunded to the officer.

(b) Any real property owner eligible to receive a real property tax credit under this section shall receive the tax credit as of the next half of the real property tax year following the date the real property owner applied for the credit. The real property owner shall continue to receive the real property tax credit for each succeeding 9 halves of the real property tax year, provided the real property owner remains eligible to receive the tax credit. (June 11, 1992, D.C. Law 9-118, § 6a as added Oct. 8, 1993, D.C. Law 10-63, § 6(b), 40 DCR 7344 and Feb. 23, 1994, D.C. Law 10-70, § 8(b), 40 DCR 7575.)

**Effect of amendments.** — D.C. Law 10-70 added this section.

**Legislative history of Law 10-63.** — D.C. Law 10-63, the “Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-373. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-117 and transmitted to both Houses of Congress for its review. D.C. Law 10-63 became effective on November 25, 1993.

**Legislative history of Law 10-70.** — D.C. Law 10-70, the “Metropolitan Police Housing Assistance Program and Community Safety Act of 1993,” was introduced in Council and assigned Bill No. 10-325, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on September 21, 1993, and October 5, 1993, respec-

tively. Signed by the Mayor on October 25, 1993, it was assigned Act No. 10-124 and transmitted to both Houses of Congress for its review. D.C. Law 10-70 became effective on February 23, 1994.

**Mayor authorized to issue rules.** — Section 5 of D.C. Law 10-70 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules within 90 days after February 23, 1994, to implement the provisions of this chapter. The rules shall include, but not be limited to, the following:

- (1) An application procedure for the Metropolitan Police Housing Assistance Program; and
- (2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

## CHAPTER 22B. METROPOLITAN POLICE HOUSING ASSISTANCE AND COMMUNITY SAFETY PROGRAM.

Sec.

45-2231. Definitions.

45-2232. Rental assistance.

Sec.

45-2233. Community police presence.

### § 45-2231. Definitions.

For the purposes of this chapter, the term:

(1) "Department" means the District of Columbia Department of Public and Assisted Housing Development.

(2) "First-time homebuyer" means a purchaser who has no ownership interest in a principal residence at any time during the 3-year period ending on the date of the application for assistance, but includes an applicant who has divorced or separated during the 3-year period where a formal settlement did not convey an ownership interest in a principal residence which had been jointly owned.

(3) "Housing unit" means any room or group of rooms forming a single-family residential unit, including a semi-detached condominium, cooperative, or semi-detached or detached home that is intended to be used or used for living, sleeping, and the preparation and eating of meals by human occupants.

(4) "Police officer" means officers of all ranks employed by the District of Columbia Metropolitan Police Department. (Oct. 8, 1993, D.C. Law 10-63, § 2, 40 DCR 7344; Feb. 23, 1994, D.C. Law 10-70, § 2, 40 DCR 7575.)

**Legislative history of Law 10-63.** — D.C. Law 10-63, the "Metropolitan Police Housing Assistance Program and Community Safety Temporary Act of 1993," was introduced in Council and assigned Bill No. 10-373. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-117 and transmitted to both Houses of Congress for its review. D.C. Law 10-63 became effective on November 25, 1993.

**Legislative history of Law 10-70.** — D.C. Law 10-70, the "Metropolitan Police Housing Assistance Program and Community Safety Act of 1993," was introduced in Council and assigned Bill No. 10-325, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on September 21, 1993, and October 5, 1993, respectively. Signed by the Mayor on October 25, 1993, it was assigned Act No. 10-124 and transmitted to both Houses of Congress for its review. D.C. Law 10-70 became effective on February 23, 1994.

**Mayor authorized to issue rules.** — Section 5 of D.C. Law 10-70 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules within 90 days after February 23, 1994, to implement the provisions

of this chapter. The rules shall include, but not be limited to, the following:

(1) An application procedure for the Metropolitan Police Housing Assistance Program; and

(2) A standard of eligibility and selection of Metropolitan Police Housing Assistance Program applicants. The Mayor may establish priorities for eligibility based on length of residency in the District, geographic location, or other means as deemed appropriate.

**Report on cost of tax exemption for police substations.** — Section 6 of D.C. Law 10-70 provided that six months from February 23, 1994, the Department of Finance and Revenue shall submit a report to the Council on the fiscal impact of providing a real property tax exemption to that portion of the real property belonging to any individual, partnership, or corporation that is provided rent free to the District for use solely by the Metropolitan Police Department as a police substation. The exemption shall be applicable only while the property is used as an active police substation.

**Report on fiscal impact.** — Section 7 of D.C. Law 10-70 provided that at the end of 1 year from the issuance of regulations to implement this chapter, similar incentives for teachers and firefighters shall be considered, and the Department of Finance and Revenue shall sub-

mit a report to the Council on the fiscal impact of these incentives.

**§ 45-2232. Rental assistance.**

(a) The Department shall offer public housing units at a discounted rental rate to Metropolitan police officers. In assigning public housing units, the Department shall establish a priority for Metropolitan police officers who already reside in the District.

(b) Notwithstanding any other provision of District of Columbia law or regulation, Metropolitan police officers who reside in the District of Columbia may receive discounted rent from private or public housing providers.

(c) All Metropolitan police officers who receive a discounted rent from a private or public housing provider shall notify the Chief of Police of the terms of the discount, and provide a copy of any lease or written agreement detailing the terms of the housing arrangement.

(d) Any discounted rent received by a Metropolitan police officer shall not be considered income for purposes of District of Columbia income tax. (Oct. 8, 1993, D.C. Law 10-63, § 3, 40 DCR 7344; Feb. 23, 1993, D.C. Law 10-70, § 3, 40 DCR 7575.)

**Legislative history of Law 10-63.** — See note to § 45-2231.      **Legislative history of Law 10-70.** — See note to § 45-2231.

**§ 45-2233. Community police presence.**

All Metropolitan police officers who reside in the District of Columbia shall be eligible to keep in their possession at all times, overnight and off-duty, the official vehicles assigned for patrol purposes. In assigning police vehicles to be taken by police officers while off-duty, the Chief of Police shall establish priorities based on District residency, dispersion by geographic locations, and other factors the Chief of Police may deem appropriate. (Oct. 8, 1993, D.C. Law 10-63, § 4, 40 DCR 7344; Feb. 23, 1994, D.C. Law 10-70, § 4, 40 DCR 7575.)

**Legislative history of Law 10-63.** — See note to § 45-2231.      **Legislative history of Law 10-70.** — See note to § 45-2231.

## CHAPTER 23. SERVICEMEN'S READJUSTMENT.

Sec.

45-2301. Disability of minority removed; investments by building, building and loan, and savings and loan associations.

Sec.

45-2302. Direct-reduction loans authorized; obligor to be member of lending association.

**§ 45-2301. Disability of minority removed; investments by building, building and loan, and savings and loan associations.**

(a) The disability of minority of a resident of the District of Columbia who is eligible for guaranty of a loan pursuant to the Servicemen's Readjustment Act of 1944 (58 Stat. 284) and of a minor spouse of any such resident (when acting jointly with such resident) is hereby removed with respect to the incurring of any obligation all or part of which is guaranteed under the provisions of said Act or in conjunction with which a secondary loan is so guaranteed, and with respect to the exercise of the rights of ownership in any property acquired with the proceeds of any such obligation, including the right to sell, convey, lease, encumber, improve or maintain the same and to further obligate himself incident to his exercise of such rights.

(b) Notwithstanding any other provision of law, any building association or building and loan association or any savings and loan association, incorporated or unincorporated, organized and operating under the laws of the District of Columbia, or any federal savings and loan association whose main office is in the District of Columbia, may invest its funds in:

(1) Property-improvement loans insured or insurable under Title I of the National Housing Act (12 U.S.C. § 1702 et seq.);

(2) Loans to veterans of World War II when guaranteed in whole or in part by a loan guaranty certificate issued under the Servicemen's Readjustment Act of 1944, including, without limitation, such loans as are unsecured and such loans as are junior to another mortgage or lien upon the security; and

(3) Other secured or unsecured loans for property alteration, repair, or improvement or for home equipment; provided, that no such unsecured loan not insured or guaranteed by a federal agency shall be made in excess of \$2,000; provided further, that the total amount loaned or invested and held in unsecured loans not insured or guaranteed by a federal agency as provided for under this subsection at any 1 time shall not exceed 15% of the association's assets. (May 1, 1946, 60 Stat. 159, ch. 245, § 2; 1973 Ed., § 45-1701.)

**References in text.** — The Servicemen's Readjustment Act of 1944, referred to in subsections (a) and (b)(2) of this section, is the Act of June 22, 1944, 58 Stat. 284, codified prima-

rily as former 38 U.S.C. § 693 et seq., and repealed by the Act of Sept. 2, 1958, 72 Stat. 1273, Pub. L. 85-857. See now 38 U.S.C. § 3701 et seq.

**§ 45-2302. Direct-reduction loans authorized; obligor to be member of lending association.**

Any building association, building and loan association, or savings and loan association organized and operating under the laws of the District of Columbia is authorized to lend money to veterans of World War II and others upon the security of a first deed of trust or first mortgage upon real estate, to be repaid in monthly or quarterly payments to be applied first to interest and the balance to principal until the indebtedness is paid in full, and without subscription to, or ownership of any shares, and such loans shall be known as direct-reduction loans. Direct-reduction-loan borrowers, and all persons assuming or obligated under direct-reduction loans made or held by such association shall be members of the association, and at all meetings of the members of the association, each borrower or each obligor upon a direct-reduction loan shall be entitled to 1 vote as such member. (May 1, 1946, 60 Stat. 159, ch. 245, § 3; 1973 Ed., § 45-1702.)

**CHAPTER 24. DELINQUENT HOME MORTGAGE PAYMENTS FUND.**

Sec.

45-2401 to 45-2407. [Expired].

**§§ 45-2401 to 45-2407. Definitions; Fund established; appropriation; composition of Fund; availability of loans; eligibility requirements; repayment schedule; repayment; loan recorded as lien; rules; annual audit; annual report; budget to compensate capitalization deficiency.**

Expired.

**Expiration of chapter.** — Section 9(b) of D.C. Law 5-98, as amended by § 2(c) of D.C. Law 6-152, provided that the act shall expire 5 years from the date it becomes effective. D.C. Law 5-98 became effective August 10, 1984.

## REAL PROPERTY

### CHAPTER 25. RENTAL HOUSING.

#### *Subchapter I. Findings; Purposes; Definitions.*

Sec.

- 45-2501. Findings.
- 45-2502. Purposes.
- 45-2503. Definitions.

#### *Subchapter II. Rent Stabilization Program.*

- 45-2511. Continuation of Rental Housing Commission; composition; appointment; qualifications; compensation; removal.
- 45-2512. Powers and duties of Rental Housing Commission.
- 45-2513. Rental Accommodations and Conversion Division.
- 45-2514. Duties of the Rent Administrator.
- 45-2515. Registration and coverage.
- 45-2516. Rent ceiling.
- 45-2517. Adjustments in rent ceiling.
- 45-2518. Increases above base rent.
- 45-2519. Rent ceiling upon termination of exemption and for newly covered rental units.
- 45-2520. Petitions for capital improvements.
- 45-2521. Services and facilities.
- 45-2522. Hardship petition.
- 45-2523. Vacant accommodation.
- 45-2524. Substantial rehabilitation.
- 45-2525. Voluntary agreement.
- 45-2526. Adjustment procedure.
- 45-2527. Security deposit.
- 45-2528. Remedy.
- 45-2529. Judicial review.
- 45-2529.1. Report of Mayor.
- 45-2529.2. Certificate of assurance.

#### *Subchapter III. Tenant Assistance Program.*

- 45-2531. Definitions.
- 45-2532. Establishment of Tenant Assistance Program; designation of monies.
- 45-2533. Authorization to enter into contracts for tenant assistance payments; determination of eligibility; procedure upon determination of eligibility.
- 45-2534. Tenant assistance payments.
- 45-2535. Approval and maintenance of rental units; obligations of families.
- 45-2536. Continued eligibility.
- 45-2537. Termination of eligibility.
- 45-2538. Tax exemption.

#### *Subchapter IV. Revenue.*

- 45-2541. Rental unit fee.

#### *Subchapter V. Evictions; Retaliatory Action.*

- 45-2551. Evictions.
- 45-2552. Retaliatory action.

Sec.

- 45-2553. Conciliation and arbitration service.
- 45-2554. Arbitration.
- 45-2555. Prohibition of discrimination against elderly tenants or families with children.

#### *Subchapter V-A. Residential Drug-Related Evictions.*

- 45-2559.1. Definitions.
- 45-2559.2. Action for possession of rental unit used as a drug haven.
- 45-2559.3. Preliminary injunction review.
- 45-2559.4. Full hearing.
- 45-2559.5. Default judgment.
- 45-2559.6. Complaint by affected tenant or resident association.
- 45-2559.7. Mayor's authority and responsibility.
- 45-2559.8. Rules.
- 45-2559.9. Availability of other remedies.

#### *Subchapter VI. Conversion or Demolition of Rental Housing for Hotels, Motels, or Inns.*

- 45-2561. Conversion.
- 45-2562. Demolition.

#### *Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance*

- 45-2571. Notice of right to assistance.
- 45-2572. Eligibility assistance.
- 45-2573. Payments.
- 45-2574. Relocation advisory services.
- 45-2575. Tenant hot line.

#### *Subchapter VIII. New and Vacant Rental Housing and Distressed Property.*

- 45-2581. Declaration of policy.
- 45-2582. Tax abatement for new or rehabilitated vacant rental housing.
- 45-2583. Deferral or forgiveness of water and sewer fees for rehabilitated vacant rental housing.
- 45-2584. Distressed properties improvement program.
- 45-2585. Distressed property improvement plan.
- 45-2586. Incentives for development of single-room-occupancy housing.

#### *Subchapter IX. Miscellaneous Provisions.*

- 45-2591. Penalties.
- 45-2592. Attorney's fees.
- 45-2593. Supersedure.
- 45-2594. Service.

*Subchapter I. Findings; Purposes; Definitions.***§ 45-2501. Findings.**

The Council of the District of Columbia finds that:

(1) There is a severe shortage of rental housing available to citizens of the District of Columbia ("District").

(2) The shortage of housing is growing due to the withdrawal of housing units from the housing market, deterioration of existing housing units, and the lack of development of new or rehabilitation of vacant housing units.

(3) The shortage of housing is felt most acutely among low- and moderate-income renters, who are finding a shrinking pool of available dwellings.

(4) The cost of basic accommodation is so high as to cause undue hardship for many citizens of the District of Columbia.

(5) Many low- and moderate-income tenants need assistance to cover basic shelter costs, but the assistance should maximize individual choice.

(6) The Rent Stabilization Program ("Program") has a more substantial impact upon small housing providers than on large housing providers, and small housing providers find it more difficult to use the administrative machinery of the Program.

(7) Many small housing providers are experiencing financial difficulties and are in need of some special mechanisms to assist them and their tenants.

(8) The present Rent Stabilization Program should not be continued indefinitely and new approaches must be investigated to prevent the withdrawal of rental housing units from the market and the deterioration of existing rental housing units, and to increase the rental housing supply.

(9) The housing crisis in the District has not substantially improved since the passage of the Rental Housing Act of 1980.

(10) The Rent Stabilization Program should be extended for 6 years.

(11) This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare. (July 17, 1985, D.C. Law 6-10, § 101, 32 DCR 3089.)

**Cross references.** — As to definition of Rental Housing Act of 1980, see § 45-2503.

**Legislative history of Law 6-10.** — Law 6-10, the "Rental Housing Act of 1985," was introduced in Council and assigned Bill No. 6-33, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-23 and transmitted to both Houses of Congress for its review.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**Delegation of authority pursuant to D.C. Law 6-10.** — See Mayor's Order 85-167, October 2, 1985.

See Mayor's Order 86-27, February 6, 1986, as amended by Mayor's Order 86-166, September 19, 1986.

**Federal preemption.** — District of Columbia housing law is not preempted by the federal right of rejection in 11 U.S.C. § 365. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

Inasmuch as the obligations imposed by District of Columbia for the benefit of public health and safety are independent of private leases, rejection of leases under 11 U.S.C. § 365(h) has no bearing on the debtor-landlord's obligations under applicable local law. *Saravia v. 1736 18th St., N.W., Ltd. Partnership*, 844 F.2d 823 (D.C. Cir. 1988).

**Applicability of Rental Housing Act.** — A houseboat is not a rental unit and not subject to the jurisdiction of the Rental Housing Act. *Washington Channel Ltd. Partnership v. 56' Carri-Craft Motor Yacht Named "Hubris"*, 687 F. Supp. 682 (D.D.C. 1988).

**Construction.** — The District's rent stabilization program was designed to remedy a critical social evil, namely a severe shortage of rental housing, and it must be accorded a generous construction to achieve its purposes. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990).

**Former § 45-1501 cited** in *Drayton v. Poretsky Mtg., Inc.*, App. D.C., 462 A.2d 1115 (1983).

**Cited** in *Marshall v. District of Columbia Rental Hous. Comm'n*, App. D.C., 533 A.2d 1271 (1987); *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987); *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988); *Valentine v. United States*, 706 F. Supp. 77 (D.D.C. 1989); *Hornstein v. Barry*, App. D.C., 560 A.2d 530 (1989); *Plaza W. Coop. v. Rhodes*, 117 WLR 397 (Super. Ct. 1989); *McGinty v. Dickson*, 117 WLR 1109 (Super. Ct. 1989); *Samuel v. King*, 118 WLR 2753 (Super. Ct. 1990); *Hampton Courts Tenants Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 599 A.2d 1113 (1991); *Camacho v. 1440 Rhode Island Ave. Corp.*, App. D.C., 620 A.2d 242 (1993); "N" St. Follies Ltd. Partnership v. District of Columbia Rental Hous. Comm'n, App. D.C., 622 A.2d 61 (1993); *King v. Jones*, App. D.C., 647 A.2d 64 (1994).

## § 45-2502. Purposes.

In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

- (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
- (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
- (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
- (4) To protect the existing supply of rental housing from conversion to other uses; and
- (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments. (July 17, 1985, D.C. Law 6-10, § 102, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2501.

**In general.** — Like the civil rights statute, the Rental Housing Act relies largely on lay persons operating without legal assistance to initiate and litigate administrative and judicial proceedings. *Goodman v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 1293 (1990).

**Purpose.** — The Rental Housing Act was designed, in substantial part, to protect low- and moderate-income tenants from the erosion of their income for increased housing costs and is remedial in character. *Goodman v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 1293 (1990).

**Construction.** — The District's rent stabili-

zation program was designed to remedy a critical social evil, namely a severe shortage of rental housing, and it must be accorded a generous construction to achieve its purposes. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990).

**Cited** in *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987); *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 550 A.2d 51 (1988); *James Parreco & Son v. District of Columbia Rental Hous. Comm'n*, App. D.C., 567 A.2d 43 (1989); *Tenants of 2301 E St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 580 A.2d 622 (1990); *Carlton v. Boucher*, 118 WLR 2053 (Super. Ct. 1990).

### § 45-2503. Definitions.

For the purposes of this chapter, the term:

(1) "Annual fair market rental amount" means the annualized sum of the rents collected for all rental units in the housing accommodation during the base calculation year, plus an amount equal to the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C. Standard Metropolitan Statistical Area, during each calendar year; provided, however, that if no rents were collected in the base calculation year because the housing accommodation was then under construction, the annual fair market rental amount shall be a sum equal to the rents which would have been collected during the base calculation year had the housing accommodation been 100% occupied during the entire base calculation year, the sum to be determined by appraisal, as increased by the Consumer Price Index increase under this paragraph.

(2) "Apartment improvement program" means the program which is administered with grant funds from title I of the Housing and Community Development Act of 1974 (42 U.S.C. § 5301 et seq.), by the District of Columbia Department of Housing and Community Development, developed by the Neighborhood Reinvestment Corporation under the national Neighborhood Reinvestment Corporation Act (42 U.S.C. § 8101 et seq.), and operated under the supervision of the public-private Partnership Committee, which program has been established for the purpose of finding solutions to the economic and physical distress of moderate income rental apartment buildings by joining the tenants, housing provider, noteholder, and the District government in a collective effort.

(3) "Base calculation year" means the calendar year immediately preceding the first calendar year in which a given housing accommodation is made subject to §§ 45-2515(f) through 45-2529, or any future District law limiting the amount of rent which can lawfully be demanded or received from a tenant.

(4) "Base rent" means that rent legally charged or chargeable on April 30, 1985, for the rental unit which shall be the sum of rent charged on September 1, 1983, and all rent increases authorized for that rental unit by prior rent control laws or any administrative decision issued under those laws, and any rent increases authorized by a court of competent jurisdiction.

(5) "Building improvement plan" means the agreement executed between the parties of interest, including the tenants, housing provider, and the District government, at a property being treated under the apartment improvement program, which agreement sets forth the remedies to the property's distress, including, but not limited to:

(A) A schedule of repairs and capital improvements which, at a minimum, will bring the property into substantial compliance with the housing regulations;

(B) A schedule of services and facilities; and

(C) A schedule of rent ceilings and rent increases; and which agreement is monitored by the District government until it expires upon completion of all physical improvements and other scheduled activities included therein.

(6) "Capital improvement" means an improvement or renovation other than ordinary repair, replacement, or maintenance if the improvement or renovation is deemed depreciable under the Internal Revenue Code (26 U.S.C.).

(7) "Cooperative housing association" means an association incorporated for the purpose of owning and operating residential real property in the District, the shareholders or members of which, by reason of their ownership of stock or membership certificate, a proprietary lease, or evidence of membership, are entitled to occupy a dwelling unit under the terms of a proprietary lease or occupancy agreement.

(8) "Council" means the Council of the District of Columbia.

(9) "Distressed property" means a housing accommodation that:

(A) Is experiencing, and has experienced for at least 2 years, a negative cash flow;

(B) Has been cited by the Department of Consumer and Regulatory Affairs as being in substantial noncompliance with the housing regulations;

(C) Has been subject to deferred maintenance as a result of negative cash flow; and

(D) Has been in arrears on either permanent mortgage loan-payments, property tax payments, fuel and utility payments, or water or sewer fee payments.

(10) "Division" means the Rental Accommodations and Conversion Division as continued by § 45-2511.

(11) "Dormitory" means any structure or building owned by an institution of higher education or private boarding school, in which at least 95% of the units are occupied by presently matriculated students of the institution of higher education or private boarding school.

(12) "Elderly tenant" means a person who is 60 years of age or older and, for the purposes of subchapter III of this chapter, a person who meets the requirements of § 45-2531(5) for eligible families and § 45-2531(8) for lower-income families.

(13) "Equity" means the portion of the assessed value of a housing accommodation that exceeds the total value of all encumbrances on the housing accommodation.

(14) "Housing accommodation" means any structure or building in the District containing 1 or more rental units and the land appurtenant thereto. The term "housing accommodation" does not include any hotel or inn with a valid certificate of occupancy or any structure, including any room in the structure, used primarily for transient occupancy and in which at least 60% of the rooms devoted to living quarters for tenants or guests were used for transient occupancy as of May 20, 1980. For the purposes of this chapter, a rental unit shall be deemed to be used for transient occupancy only if the landlord of the rental unit is subject to and pays the sales tax imposed by § 47-2001(n)(1)(C).

(15) "Housing provider" means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District.

(16) "Housing regulations" means the most recent edition of the Housing Regulations of the District of Columbia as established by Commissioner's Order No. 55-1503, effective August 11, 1955.

(17) "Initial leasing period" means that period for which the first tenant of a rental unit rents the rental unit. For units described in § 45-2519, the first tenant is the tenant who rents the rental unit immediately after the date it is first offered for rent as a rental unit which is not otherwise exempt from this chapter.

(18) "Interest payments" means the amount of interest paid during a reporting period on a mortgage or deed of trust on a housing accommodation.

(19) "Management fee" means the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the housing provider, if the duties of the personnel are connected with the operation of the housing accommodation.

(20) "Maximum possible rental income" means the sum of the rents for all rental units in the housing accommodation, whether occupied or not, computed over a base period of the 12 consecutive months within the 15 months preceding the date of any filing required or permitted under this chapter.

(21) "Mayor" means the Office of the Mayor of the District of Columbia.

(22) "Operating expenses" means the expenses required for the operation of a housing accommodation for the 12 consecutive months within the 15 months preceding the date of its use in any computation required by any provision of this chapter, including, but not limited to, expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(23) "Other income which is derived from the housing accommodation" means any income, other than rents, which a housing provider earns because of his or her interest in a housing accommodation, including, but not limited to, fees, commissions, income from vending machines, income from laundry facilities, and income from parking and recreational facilities.

(24) "Person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their respective successors and assignees.

(25) "Property taxes" means the amount levied by the District government for real property tax on a housing accommodation during a tax year.

(26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

(28) "Rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a

condition of occupancy or use of a rental unit, its related services, and its related facilities.

(29) "Rent ceiling" means that amount defined in or computed under § 45-2516.

(30) "Rental Accommodations Act of 1975" means the Rental Accommodations Act of 1975, effective November 1, 1975 (D.C. Law 1-33).

(31) "Rental Housing Act of 1977" means the Rental Housing Act of 1977, effective March 16, 1978 (D.C. Law 2-54).

(32) "Rental Housing Act of 1980" means the Rental Housing Act of 1980, effective March 4, 1981 (D.C. Law 3-131; Chapter 15 of this title).

(33) "Rental unit" means any part of a housing accommodation as defined in paragraph (14) of this section which is rented or offered for rent for residential occupancy and includes any apartment, efficiency apartment, room, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

(33A) "Single-room-occupancy housing" means a rental housing accommodation comprised of rental units, each of which is intended for occupancy and is occupied by a single adult either living alone or living with not more than 1 child of age 6 years or younger, and that may, but is not required to, contain sanitary and food-preparation facilities.

(34) "Substantial rehabilitation" means any improvement to or renovation of a housing accommodation for which:

(A) The building permit was granted after January 31, 1973; and

(B) The total expenditure for the improvement or renovation equals or exceeds 50% of the assessed value of the housing accommodation before the rehabilitation.

(35) "Substantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property.

(36) "Tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

(37) "Uncollected rent" means the amount of rent and other charges due for at least 30 days but not received from tenants at the time any statement, form, or petition is filed under this chapter.

(38) "Vacancy loss" means the amount of rent not collectable due to vacant units in a housing accommodation. No amount shall be included in vacancy loss for units occupied by a housing provider or his or her employees or otherwise not offered for rent. (July 17, 1985, D.C. Law 6-10, § 103, 32 DCR 3089; Aug. 25, 1994, D.C. Law 10-155, § 2(a), 41 DCR 4873.)

**Cross references.** — As to gross sales tax definitions, see § 47-2001.

**Section references.** — This section is referred to in §§ 3-603, 45-2519, 45-2529.2, 45-2584, and 47-830.

**Effect of amendments.** — D.C. Law 10-155 inserted (33A).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 10-155.** — See note to § 45-2586.

**Short title.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2501.

**Editor's notes.** — "D.C. Law 3-131; Chapter 15 of this title", referred to in (32), expired, except for subchapter V, April 30, 1985; subchapter V was repealed by § 905 of D.C. Law 6-10, effective July 17, 1985.

**Capital improvements.** — New elevators and a new boiler that replaced old ones qualified as capital improvements under this Act. *Cafritz Co. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 615 A.2d 222 (1992).

**Sufficient proof of exemption.** — Filing of a Certificate of Occupancy reflecting the valid conversion of two residential units to commercial units satisfies a landlord's burden of proving an exemption by credible, reliable evidence. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

Where the property in question was not being used as a housing accommodation under paragraph (14), and where the property was therefore excluded from the Rental Housing Act's coverage, in order to be exempt from the Rental Housing Act, the petitioner needed to establish not only transient use as of May 20, 1980, but also current transient use, as a structure is not subsequently excluded from the Act's coverage, regardless of its use. *"N" St. Follies Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, App. D.C., 622 A.2d 61 (1993).

**Label on lease not determinative of nature of lease.** — Fact that lease may have been labeled "commercial" was, at best, irrelevant, and, at worst, evidence of a wilful intention to circumvent the rental housing laws. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Obligation other than payment of "rent" must be specifically provided in lease.** — If a landlord wishes to make certain payments part of a tenant's rental obligation the lease must unequivocally so provide since obligations not normally thought of as rent are not transformed into rent by virtue of this section. *Ruppert Real Estate, Inc. v. McCarter*, 111 WLR 1953 (Super. Ct. 1983).

**Rental units.** — Unit occupied by an owner is not "rented or offered for rent" and thus cannot be included in the aggregate number of units under the control of an owner for so long as the owner occupies the unit. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987); *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

A houseboat is not a rental unit and not subject to the jurisdiction of the Rental Housing Act. *Washington Channel Ltd. Partnership v.*

56' Carri-Craft Motor Yacht Named "Hubris", 687 F. Supp. 682 (D.D.C. 1988).

A member's cooperative apartment is not a "rental unit" as defined in the District of Columbia Rental Housing Act because it is not "rented or offered for rent" by the cooperative to the member. *Snowden v. Benning Heights Coop.*, App. D.C., 557 A.2d 151 (1989).

**Tenant.** — Person was a "tenant" even though he was displaced by a fire. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

Maintenance men occupying employer-land-owner's premises as an incident to services they provided were not tenants because they did not occupy a rental unit. *Anderson v. William J. Davis, Inc.*, App. D.C., 553 A.2d 648 (1989).

**Shelter for homeless operated in a federally-owned building was not rental unit**, as defined in this section, where the government never sought nor received any rent for the use of the shelter. *Robbins v. Reagan*, 616 F. Supp. 1259 (D.D.C.), aff'd as modified, 780 F.2d 37 (D.C. Cir. 1985).

**Residents of shelter for homeless were not tenants** as defined in this section, and not entitled to the 30-day notice to quit in §§ 45-1403 and 45-1404, where the government never sought nor received any rent for the use of the shelter. *Robbins v. Reagan*, 616 F. Supp. 1259 (D.D.C.), aff'd as modified, 780 F.2d 37 (D.C. Cir. 1985).

**Vacancy loss.** — Rental Housing Commission erred in affirming a vacancy loss on the basis of the examiner's finding that the unit was not offered for rent during the relevant reporting period. *Kates v. District of Columbia Rental Hous. Comm'n*, App. D.C., 630 A.2d 1131 (1993).

A vacancy loss is allowed only if the unit is vacant and offered for rent during the reporting period. *Kates v. District of Columbia Rental Hous. Comm'n*, App. D.C., 630 A.2d 1131 (1993).

**Retaliatory eviction defense.** — There is no implied, common-law retaliatory eviction defense that extends to commercial tenancies. *Espenschied v. Mallick*, App. D.C., 633 A.2d 388 (1993).

**Appellate review.** — Appellate review of the District of Columbia Rental Housing Commission's interpretation of whether a building constitutes a "housing accommodation" under paragraph (14) is deferential, as long as that interpretation is reasonable and not plainly wrong or inconsistent with its legislative purpose. *"N" St. Follies Ltd. Partnership v. District of Columbia Rental Hous. Comm'n*, App. D.C., 622 A.2d 61 (1993).

**Former § 45-1503 cited** in *District of Columbia v. Farmer*, 113 WLR 1009 (Super. Ct. 1985).

**Cited** in Ontell v. Capitol Hill E.W. Ltd. Partnership, App. D.C., 527 A.2d 1292 (1987); Nwankwo v. District of Columbia Rental Hous. Comm'n, App. D.C., 542 A.2d 827 (1988); Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 550 A.2d 51 (1988); James Parreco & Son v. District of Columbia Rental Hous. Comm'n, App. D.C., 567 A.2d 43 (1989); 1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 306 (1990); Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990); Davenport v. District of Co-

lumbia Rental Hous. Comm'n, App. D.C., 579 A.2d 1155 (1990); Tenants of 500 23rd St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 617 A.2d 486 (1992); Camacho v. 1440 Rhode Island Ave. Corp., App. D.C., 620 A.2d 242 (1993); Kates v. District of Columbia Rental Hous. Comm'n, App. D.C., 630 A.2d 1131 (1993); King v. Jones, App. D.C., 647 A.2d 64 (1994); Tenants of 1255 N.H. Ave., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 647 A.2d 70 (1994); Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994).

### *Subchapter II. Rent Stabilization Program.*

## **§ 45-2511. Continuation of Rental Housing Commission; composition; appointment; qualifications; compensation; removal.**

(a) The Rental Housing Commission established by § 45-1512 is continued and shall be composed of 3 members appointed by the Mayor with the advice and consent of the Council. The members' terms shall not exceed 3 years. Members may be appointed for successive terms. The terms of members of the Rental Housing Commission appointed under the Rental Housing Act of 1980 shall expire upon the confirmation of at least 2 new members appointed pursuant to this section but no later than 90 days after July 17, 1985, and the Mayor shall appoint the new members within 30 days of July 17, 1985. The Mayor shall designate 1 member of the Rental Housing Commission as the chairperson and administrative head. The date of swearing in for a majority of the members of the Rental Housing Commission appointed pursuant to this section shall become the anniversary date for all subsequent appointments.

(b) The Rental Housing Commission shall be composed of 3 persons admitted to practice before the District of Columbia Court of Appeals. All members of the Rental Housing Commission shall be residents of the District. No member shall be either a housing provider or a tenant.

(c) Each member of the Rental Housing Commission shall receive annual compensation payable in regular installments at the rate of compensation equivalent to that received by a District employee compensated at a grade 15 of the District schedule established under subchapter XII of Chapter 6 of Title 1.

(d) Any person appointed to fill a vacancy on the Rental Housing Commission shall be appointed only for the unexpired term of the member whose vacancy is being filled.

(e) The Mayor shall remove any member of the Rental Housing Commission for good cause. (July 17, 1985, D.C. Law 6-10, § 201, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 2(a), 34 DCR 5304; Oct. 7, 1987, D.C. Law 7-31, § 4, 34 DCR 3789.)

**Cross references.** — As to merit system classification policy and grade levels, see § 1-612.1.

**Section references.** — This section is referred to in § 45-2503.

**Effect of amendments.** — D.C. Law 7-31 added the fifth sentence in subsection (a).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — Law 7-30, the “Tenant Assistance Program and Rental Housing Commission Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-226, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 30, 1987, and July 14, 1987, respectively. Signed by the Mayor on July 21, 1987, it was assigned Act No. 7-58 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-31.** — Law 7-131, the “Boards and Commissions Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987, and May 5, 1987, respectively. Signed

by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**References in text.** — Section 45-1512, referred to in the first sentence of subsection (a), expired pursuant to § 907 of D.C. Law 3-131 on April 30, 1985.

**Former § 45-1511 cited** in Drayton v. Poretsky Mgt., Inc., App. D.C., 462 A.2d 1115 (1983).

**Former § 45-1512 cited** in Drayton v. Poretsky Mgt., Inc., App. D.C., 462 A.2d 1115 (1983).

**Cited** in Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990); Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

## § 45-2512. Powers and duties of Rental Housing Commission.

(a) The Rental Housing Commission shall:

(1) Issue, amend, and rescind rules and procedures for the administration of this chapter;

(2) Decide appeals brought to it from decisions of the Rent Administrator, including appeals under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980; and

(3) Certify and publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year the annual adjustment of general applicability in the rent ceiling of a rental unit under § 45-2516.

(b)(1) The Rental Housing Commission may hold hearings, sit and act at times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents as the Rental Housing Commission may consider advisable in carrying out its functions under this chapter.

(2) A majority of the Rental Housing Commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining Rental Housing Commissioners to exercise all the powers of the Rental Housing Commission.

(3) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rental Housing Commission, shall

issue an order requiring the contumacious person to appear before the Rental Housing Commission, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of the person to obey any order of the Superior Court of the District of Columbia may be punished by that Court for contempt.

(c) Upon the written request of the chairperson of the Rental Housing Commission, each department or entity of the District government may furnish directly to the Rental Housing Commission any assistance and information necessary for the Rental Housing Commission to carry out effectively this chapter.

(d) The Department of Consumer and Regulatory Affairs shall employ the staff necessary to assist the Rental Housing Commission in carrying out its functions. Of the staff employed, 3 shall be law clerks who shall assist each member of the Rental Housing Commission in the preparation of decisions and orders. (July 17, 1985, D.C. Law 6-10, § 202, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 2(b), 34 DCR 5304.)

**Cross references.** — As to definitions of Rental Accommodations Act of 1975 and Rental Housing Acts of 1977 and 1980, see § 45-2503.

**Section references.** — This section is referred to in § 45-2501.

**Legislative history of Law 6-10.** — See note to § 45-2511.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Termination of Law 6-10.** — See note to § 45-2511.

**Rental Housing Commission has primary jurisdiction over rent stabilization issues.** The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties; "primary jurisdiction," on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a

regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. *Yasuna v. District of Columbia Rental Hous. Comm'n*, App. D.C., 504 A.2d 605 (1986).

**And primary jurisdiction precludes adjudication of rent ceiling in action for possession in Superior Court** and requires its adjudication before the Rental Accommodations Office. *Yasuna v. District of Columbia Rental Hous. Comm'n*, App. D.C., 504 A.2d 605 (1986).

**Former § 45-1513 cited in** *District Properties Assocs. v. District of Columbia*, 743 F.2d 21 (D.C. Cir. 1984).

**Cited in** *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990); *Johnson v. District of Columbia Rental Hous. Comm'n*, App. D.C., 642 A.2d 135 (1994).

## § 45-2513. Rental Accommodations and Conversion Division.

(a) There is continued as a division in the Department of Consumer and Regulatory Affairs, a Rental Accommodations and Conversion Division which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall possess experience of a technical nature in housing-provider or tenant affairs or in a field directly related to housing-provider or tenant affairs, shall be a resident of the District, and shall be entitled to receive annual compensation, payable in regular installments, at the rate of grade 15 of the District schedule established under subchapter XIII of Chapter 6 of Title 1. (July 17, 1985, D.C. Law 6-10, § 203, 32 DCR 3089.)

**Cross references.** — As to merit system classification policy and grade levels, see § 1-612.1.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

## § 45-2514. Duties of the Rent Administrator.

(a) The Rent Administrator shall draft rules and procedures for the administration of this chapter to be transmitted to the Rental Housing Commission for its action under § 45-2512(a)(1).

(b) The Rent Administrator shall carry out, according to rules and procedures established by the Rental Housing Commission under § 45-2512(a)(1), the rent stabilization program established under this subchapter, and shall perform other duties necessary and appropriate to, and consistent with this chapter.

(c) The Rent Administrator shall have jurisdiction over those complaints and petitions arising under subchapters II, IV, V, VI, and IX of this chapter and Title V of the Rental Housing Act of 1980 which may be disposed of through administrative proceedings.

(d)(1) The Rent Administrator may employ, with funds available to the Rent Administrator, personnel and consultants, including hearing examiners, accountants, and legal counsel, reasonably necessary to carry out this chapter.

(2) In accordance with the regulations issued by the Rental Housing Commission, the Rent Administrator may delegate authority to those employees appointed in conformity with paragraph (1) of this subsection. This authority may include, but is not limited to:

(A) Hearing administrative petitions filed or initiated under this chapter;

(B) Issuing decisions on the petitions; and

(C) Rendering final orders on any petition heard by those employees.

(e) The Rent Administrator or a designee may attend all policy meetings of the Rental Housing Commission.

(f) The Rent Administrator shall establish and maintain a formal relationship with the Landlord/Tenant Branch of the Superior Court of the District of Columbia and the Metropolitan Police Department.

(g) The Rent Administrator may issue at the request of any person an advisory opinion on issues of first impression under this chapter.

(h)(1) The Rent Administrator may hold hearings, sit and act at those times and places within the District, administer oaths, and require by subpoena or otherwise the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents the Rent Administrator may consider necessary in carrying out his or her functions under this chapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under paragraph (1) of this subsection by any person who resides in, is found in, or transacts business within the District, the Superior Court of the District of Columbia, at the written request of the Rent Administrator, shall issue to the contumacious person an order requiring that person to appear before the Rent

Administrator, to produce evidence if so ordered, or to give testimony touching upon the matter under inquiry. Any failure of that person to obey any order of the Superior Court of the District of Columbia may be punished by that Court as contempt.

(i) Upon the written request of the Rent Administrator, each department or entity of the District government may furnish directly to the Rent Administrator assistance and information necessary to discharge effectively the functions required under this chapter.

(j) The Rent Administrator shall publish in English and Spanish within 60 days after July 17, 1985, a booklet or other written material describing the rights and obligations of tenants and housing providers and procedures under this chapter. This material shall be distributed through the District libraries and other District offices with which the public has frequent contact and at the office of any community organization which requests to distribute the material.

(k) The Rent Administrator shall publish within 30 days after July 17, 1985, and prior to March 1 of each subsequent year in the D.C. Register the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items, in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA), during the preceding calendar year. (July 17, 1985, D.C. Law 6-10, § 204, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**References in text.** — Title V of the Rental Housing Act of 1980, referred to in subsection (c), was Title V of D.C. Law 3-131, codified as former subchapter 5 of Chapter 15 of this title, and repealed July 17, 1985, by D.C. Law 6-10, § 905.

**Termination of Law 6-10.** — See note to § 45-2511.

**Adjudicative functions are conferred on Rent Administrator.** City Wide Learning Ctr.,

Inc. v. William C. Smith & Co., App. D.C., 488 A.2d 1310 (1985).

**Former § 45-1514 cited** in District Properties Assocs. v. District of Columbia, 743 F.2d 21 (D.C. Cir. 1984).

**Former § 45-1515 cited** in Rhodes v. Quaorm, App. D.C., 465 A.2d 370 (1983); District Properties Assocs. v. District of Columbia, 743 F.2d 21 (D.C. Cir. 1984).

**Cited** in In re Banks, App. D.C., 561 A.2d 158 (1987); Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

## § 45-2515. Registration and coverage.

(a) Sections 45-2515(f) through 45-2529, except § 45-2527, shall apply to each rental unit in the District except:

(1) Any rental unit in any federally or District-owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally or District-subsidized except units subsidized under subchapter III;

(2) Any rental unit in any newly constructed housing accommodation for which the building permit was issued after December 31, 1975, or any newly created rental unit, added to an existing structure or housing accommodation and covered by a certificate of occupancy for housing use issued after January 1, 1980, provided, however, that this exemption shall not apply to any housing accommodation the construction of which required the demolition of an housing accommodation subject to this chapter, unless the number of newly constructed rental units exceeds the number of demolished rental units;

(3) Any rental unit in any housing accommodation of 4 or fewer rental units, including any aggregate of 4 rental units whether within the same structure or not, provided:

(A) The housing accommodation is owned by not more than 4 natural persons;

(B) None of the housing providers has an interest, either directly or indirectly, in any other rental unit in the District of Columbia;

(C) The housing provider of the housing accommodation files with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the housing provider of the valid claim to the exemption. The claim of exemption statement shall also contain the signatures of each person having an interest, direct or indirect, in the housing accommodation. Any change in the ownership of the exempted housing accommodation or change in the housing provider's interest in any other housing accommodation which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

(D) The limitation of the exemption to a housing accommodation owned by natural persons shall not apply to a housing accommodation owned or controlled by a decedent's estate or testamentary trust if the housing accommodation was, at the time of the decedent's death, already exempt under the terms of paragraphs (3)(A) and (3)(B) of this subsection; and

(E) For purposes of determining the eligibility of a condominium rental unit for the exemption provided by this paragraph, by § 45-1642(a)(3), or by § 45-1516(a)(3), a housing accommodation shall be the aggregate of the condominium rental units and any other rental units owned by the natural person(s) claiming the exemption.

(4) Any housing accommodation which has been continuously vacant and not subject to a rental agreement since January 1, 1985, and any housing accommodation previously exempt under § 206(a)(4) of the Rental Housing Act of 1980, provided that upon rerental the housing accommodation is in substantial compliance with the housing regulations when offered for rent;

(5) Any rental unit in any structure owned by a cooperative housing association, if:

(A) The proprietary lease or occupancy agreement for the rental unit is owned by not more than 4 natural persons, who are shareholders or members of the cooperative housing association;

(B) None of the shareholders or members has an interest, directly or indirectly, in more than 4 rental units in the District of Columbia. A shareholder or member of a cooperative housing association owning a proprietary lease or occupancy agreement for a rental unit in an association shall not be deemed to have an indirect interest in any other rental unit in any structure owned by a cooperative housing association solely by virtue of ownership of a stock or membership certificate, proprietary lease, or other evidence of membership in the association; and

(C) The shareholders or members owning the proprietary lease or

occupancy agreement for the rental unit file with the Rent Administrator a claim of exemption statement which consists of an oath or affirmation by the shareholders or members of a valid claim to the exemption. The claim of exemption statement shall also contain the signature of each person having an interest, direct or indirect, in the proprietary lease or occupancy agreement for the rental unit. Any change in the ownership of the proprietary lease or occupancy agreement or change in the shareholder's or member's interest in any other rental unit which would invalidate the exemption claim must be reported in writing to the Rent Administrator within 30 days of the change;

(6) [Disapproved.]

(7) Housing accommodations for which a building improvement plan has been executed under the apartment improvement program and housing accommodations which receive rehabilitation assistance under other multi-family assistance programs administered by the Department of Housing and Community Development, if:

(A) The building improvement plan, accompanied by a certification signed by the tenants of 70% of the occupied units, is filed with the Division at the time of execution;

(B) Upon expiration of the building improvement plan, the exemption provided under this paragraph shall terminate and the housing accommodation will again be subject to §§ 45-2515(f) through 45-2529; and

(C) Upon expiration of the building improvement plan, and notwithstanding the provisions of § 45-2519, the schedule of rent ceilings, services, and facilities established by the building improvement plans shall be considered the rent ceilings and service and facility levels established for the purposes of subchapter II of this chapter;

(8) [Disapproved.]

(9) [Disapproved.]

(10) [Disapproved.]

(b) Rent may not be increased under subsections (a)(9) and (a)(10) of this section if:

(1) The unit is vacated as a result of eviction or termination of tenancy where the housing provider seeks in good faith to recover possession for occupancy by the housing provider or a member of the housing provider's family, or the housing provider seeks to recover possession in order to remove permanently the unit from rental housing; or

(2) The vacating of a rental unit by a tenant as a result of a housing provider creating an unreasonable interference with the tenant's comfort, safety, or enjoyment of the rental unit or as a result of retaliatory action under § 45-2552 shall not be considered a voluntary vacating of the unit.

(c) Notwithstanding subsections (b)(1) and (b)(2) of this section the housing provider shall be entitled to an exemption whenever the unit is next vacated in accordance with subsections (a)(9) and (a)(10)(A) of this section after an intervening loss of the exemption.

(d) Prior to the execution of a lease or other rental agreement after July 17, 1985, a prospective tenant of any unit exempted under subsection (a) of this section shall receive a notice in writing advising the prospective tenant that rent increases for the accommodation are not regulated by the rent stabilization program.

(e) This chapter shall not apply to the following units:

(1) Any rental unit operated by a foreign government as a residence for diplomatic personnel;

(2) Any rental unit in an establishment which has as its primary purpose providing diagnostic care and treatment of diseases, including, but not limited to, hospitals, convalescent homes, nursing homes, and personal care homes;

(3) Any dormitory; and

(4) Following a determination by the Rent Administrator, any rental unit or housing accommodation intended for use as long-term temporary housing by families with 1 or more members that satisfies each of the following requirements:

(A) The rental unit or housing accommodation is occupied by families that, at the time of their initial occupancy, have had incomes at or below 50% of the District median income for families of the size in question for the immediately preceding 12 months;

(B) The housing provider of the rental unit or housing accommodation is a nonprofit charitable organization that operates the unit or housing accommodation on a strictly not-for-profit basis under which no part of the net earnings of the housing provider inure to the benefit of or are distributable to its directors, officers, or any private individual other than as reasonable compensation for services rendered; and

(C) The housing provider offers a comprehensive social services program to resident families.

(f) Within 120 days of July 17, 1985, each housing provider of any rental unit not exempted by this act and not registered under the Rental Housing Act of 1980, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District for which the housing provider is receiving rent or is entitled to receive rent. Any person who becomes a housing provider of such a rental unit after July 17, 1985 shall have 30 days within which to file a registration statement with the Rent Administrator. No penalties shall be assessed against any housing provider who, during the 120-day period, registers any units under this chapter, for the failure to have previously registered the units. The registration form shall contain, but not be limited to:

(1) For each accommodation requiring a housing business license, the dates and numbers of that housing business license and the certificates of occupancy, where required by law, issued by the District government;

(2) For each accommodation not required to obtain a housing business license, the information contained therein and the dates and numbers of the certificates of occupancy issued by the District government, and a copy of each certificate;

(3) The base rent for each rental unit in the accommodation, the related services included, and the related facilities and charges;

(4) The number of bedrooms in the housing accommodation;

(5) A list of any outstanding violations of the housing regulations applicable to the accommodation or an affidavit by the housing provider or manager that there are no known outstanding violations; and

(6) The rate of return for the housing accommodation and the computations made by the housing provider to arrive at the rate of return by application of the formula provided in § 45-2522.

(g) An amended registration statement shall be filed by each housing provider whose rental units are subject to registration under this chapter within 30 days of any event which changes or substantially affects the rents including vacant unit rent increases under § 45-2523, services, facilities, or the housing provider or management of any rental unit in a registered housing accommodation. No amended registration statement shall be required for a change in rent under § 45-2516 (b).

(h) Each registration statement filed under this section shall be available for public inspection at the Division, and each housing provider shall keep a duplicate of the registration statement posted in a public place on the premises of the housing accommodation to which the registration statement applies. Each housing provider may, instead of posting in each housing accommodation comprised of a single rental unit, mail to each tenant of the housing accommodation a duplicate of the registration statement. (July 17, 1985, D.C. Law 6-10, § 205, 32 DCR 3089; May 23, 1986, D.C. Law 6-118, § 2, 33 DCR 2444; Feb. 24, 1987, D.C. Law 6-167, § 2, 33 DCR 6732; Feb. 24, 1987, D.C. Law 6-192, § 13(a), (b), 33 DCR 7836; Mar. 7, 1991, D.C. Law 8-222, § 2, 38 DCR 203.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2518, 45-2519, 45-2527, 45-2529.1, 45-2529.2, and 45-2541.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-118.** — Law 6-118, the “Leased Condominiums Temporary Clarification Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-401. The Bill was adopted on first and second readings on March 11, 1986, and March 25, 1986, respectively. Signed by the Mayor on April 8, 1986, it was assigned Act No. 6-153 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-167.** — Law 6-167, the “Rental Housing Act of 1985 Leased Condominiums Clarification Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-406, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on September 23, 1986, and October 7, 1986, respectively. Signed by the Mayor on October 16, 1986, it was assigned Act No. 6-216

and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-192.** — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-222.** — Law 8-222, the “Low Income and Homeless Family Shelter Exemption Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-530, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-305 and transmitted to both Houses of Congress for its review.

**Termination of Law 6-10.** — See note to § 45-2511

**References in text.** — Section 45-1642(a)(3), referred to in subparagraph (a)(3)(E), was repealed March 16, 1978 by D.C. Law 2-54, § 903, 24 DCR 5334.

Section 45-1516, referred to in subsection (a)(3)(E), expired pursuant to § 907 of D.C. Law 3-131 on April 30, 1985.

Section 206(a)(4) of the Rental Housing Act of 1980, referred to in paragraph (a)(4), was codified as § 45-1515, which expired April 30, 1985, pursuant to D.C. Law 3-131, § 907.

**Editor's notes.** — On November 5, 1985, pursuant to the Initiative, Referendum, and Recall Charter Amendments Act of 1977 (D.C. Law 2-46), the electorate of the District of Columbia rejected paragraphs (a)(6), (a)(8), (a)(9), and (a)(10) of § 205 of D.C. Law 6-10.

**Indirect interest.** — Where rental housing regulations define the term "indirect interest" to mean an indirect ownership the Commission is not free to disregard it and give this term a broader construction. Cambridge Mgt. Co. v. District of Columbia Rental Hous. Comm'n, App. D.C., 515 A.2d 721 (1986).

In order to constitute an "indirect interest" some form of ownership interest, however indirect, must exist. Cambridge Mgt. Co. v. District of Columbia Rental Hous. Comm'n, App. D.C., 515 A.2d 721 (1986).

**Calculation of aggregate number of units under owner's control.** — Unit occupied by an owner is not "rented or offered for rent" and thus cannot be included in the aggregate number of units under the control of an owner for so long as the owner occupies the unit. Revithes v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1007 (1987).

If a landlord provides a free rental unit in order to assist a relative in need rather than as an attempt to circumvent the rental housing laws, the unit would presumably be excluded from the aggregate number in determining the aggregate number of units under the control of a landlord. Revithes v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1007 (1987).

Residential rental units which are vacant or temporarily withdrawn from the rental market are to be counted in determining the aggregate number of units under the control of a landlord. Revithes v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1007 (1987).

Although vacant units are to be counted, permanently withdrawn units are not to be counted in determining the aggregate number of units under the control of a landlord. Revithes v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1007 (1987).

When a rental unit has been permanently removed from the market as a rental unit, it does not count in the calculation of units. Blacknall v. District of Columbia Rental Hous.

Comm'n, App. D.C., 544 A.2d 710 (1988) (decision under prior law).

Landlord was entitled to small landlord exemption from rent control where the housing accommodation contained 4 rental units and an office which had been used as such for over 5 years. Blacknall v. District of Columbia Rental Hous. Comm'n, App. D.C., 544 A.2d 710 (1988) (decision under prior law).

**Natural persons.** — In light of the broad definition of the term "person" the Commission could reasonably conclude that use of the term "natural persons" suggests a qualification or restriction of the broader term that excludes partnerships. Price v. District of Columbia Rental Hous. Comm'n, App. D.C., 512 A.2d 263 (1986).

**Full discharge is required** on the exemption statement of those persons having any ownership interest in the property; an obligation on a promissory note secured by a first deed of trust on the property and management of rental units are not indicia of the interest contemplated under this subsection. Gibson v. Johnson, App. D.C., 486 A.2d 699 (1985).

**Applicability of notice requirements.** — The notice provisions of this section do not apply to the eviction of a member from a cooperative association. Snowden v. Benning Heights Coop., App. D.C., 557 A.2d 151 (1989).

**Tenant did not waive right to assert that he did not receive notice of landlord's exemption.** — Where tenant contended, on appeal from Commission's decision, that landlord failed to qualify for the small landlord exemption from rent stabilization because he did not notify tenant, before the execution of the lease, that the rent which could be charged for the apartment was not subject to the strictures of the Rental Housing Act, but did not properly assert contention in his various submissions to the court, tenant did not waive, by his filings in court or by any omission from them, his right to assert his claim that he did not receive notice of landlord's exemption. Goodman v. District of Columbia Rental Hous. Comm'n, App. D.C., 573 A.2d 1293 (1990).

**Application of exemption.** — Based on interpretation of former § 45-1516(a)(3)(c), application of exception to a landlord renting a two-unit dwelling and who at no time lived in the dwelling was permissible. Hanson v. District of Columbia Rental Hous. Comm'n, App. D.C., 584 A.2d 592 (1991).

**Failure to file claim of exemption.** — Rental unit was exempt from rent control even though landlord failed to file for the small landlord exemption where special circumstances, that landlord was not a landlord regularly and was reasonably unaware of the requirement of filing a claim of exemption, existed. Hanson v. District of Columbia Rental Hous. Comm'n, App. D.C., 584 A.2d 592 (1991).

**Landlord's transferee-son held entitled to exemption.** — Where a landlord's father transferred the premises to his son, while the father remained obligated on a promissory note secured by a first deed of trust on the property and continued to manage the rental units, the son was nonetheless the owner of record of the rental units and entitled to an exemption from the rent ceiling limitation, even though one motive for the transfer may have been the evasion of rent control. *Gibson v. Johnson*, App. D.C., 492 A.2d 574 (1985).

**Subsection (a)(2) applicable to partnerships.** — The omission from subsection (a)(2) of the limiting restriction of "natural persons" in the small landlord exemption indicated that noncoverage of any rental unit built after 1975 was plenary, and thus applicable to partnerships. *Seman v. District of Columbia Rental Hous. Comm'n*, App. D.C., 552 A.2d 863 (1989).

**Partnership property.** — Property purchased and titled in individuals' names 3 weeks after those individuals had formed a partnership to rent or resell property was property held in partnership and ineligible for the exemption under subsection (a)(3) of this section. *Price v. District of Columbia Rental Hous. Comm'n*, App. D.C., 512 A.2d 263 (1986).

**Burden of proof.** — A landlord, of course, bears the burden of proving qualification for exemption. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Constructive registration.** — Rental Housing Commission is not and should not be required to "constructively register" a housing accommodation when the agency has no proof of the legality of the use of the property. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Registration requirement would be triggered by a shift from an exempt to a non-exempt status.** *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Amnesty provision of subsection (f) is not available** in proceedings which were initiated by petitions filed under the Rental Housing Act of 1980 (D.C. Law 3-131). *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Commission not estopped by landlord's failure to comply with law.** — Landlord's failure to obtain a Certificate of Occupancy for a 5-unit apartment house and to appear at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs for over 8 years after the start of rent control was unjustified, and his argument that the Rental Housing Commission is estopped from imposing damages on him for failure to register is meritless. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Notice of procedural requirements for Claim of Exemption Statement.** — Landlords who changed the status of their rental units were not on notice that a Claim of Exemption Statement had to be accompanied by a Certificate of Occupancy in order to satisfy the procedural requirements of an exemption claim. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Sufficient proof of exemption.** — Filing of a Certificate of Occupancy reflecting the valid conversion of 2 residential units to commercial units satisfies a landlord's burden of proving an exemption by credible, reliable evidence. *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987).

**Cited in** *Arneja v. Gildar*, App. D.C., 541 A.2d 621 (1988); *District of Columbia v. Willis*, App. D.C., 612 A.2d 1275 (1992); *Camacho v. 1440 Rhode Island Ave. Corp.*, App. D.C., 620 A.2d 242 (1993); "N" St. Follies Ltd. Partnership v. *District of Columbia Rental Hous. Comm'n*, App. D.C., 622 A.2d 61 (1993); *Mack v. Zalco Realty, Inc.*, App. D.C., 630 A.2d 1136 (1993).

## § 45-2516. Rent ceiling.

(a) Except to the extent provided in subsections (b) and (c) of this section, no housing provider of any rental unit subject to this chapter may charge or collect rent for the rental unit in excess of the amount computed by adding to the base rent not more than all rent increases authorized after April 30, 1985, for the rental unit by this chapter, by prior rent control laws and any administrative decision under those laws, and by a court of competent jurisdiction. No tenant may sublet a rental unit at a rent greater than that tenant pays the housing provider.

(b) On an annual basis, the Rental Housing Commission shall determine an adjustment of general applicability in the rent ceiling established by subsection (a) of this section. This adjustment of general applicability shall be equal

to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year. No adjustment of general applicability shall exceed 10%. A housing provider may not implement an adjustment of general applicability, or an adjustment permitted by subsection (c) of this section for a rental unit within 12 months of the effective date of the previous adjustment of general applicability, or instead, an adjustment permitted by subsection (c) of this section in the rent ceiling for that unit.

(c) At the housing provider's election, instead of any adjustment authorized by subsection (b) of this section, the rent ceiling for an accommodation may be adjusted through a hardship petition under § 45-2522. Such a petition shall be clearly identified as an election instead of the general adjustments authorized by subsection (b) of this section. The Rent Administrator shall accord an expedited review process for these petitions and shall issue and publish a final decision within 90 days after the petition has been filed. In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator at the end of 90 days from the date of filing of the petition and as to which the housing provider is not in default in complying with any information request made under § 45-2526, the rent ceiling adjustment requested in the petition may be conditionally implemented by the housing provider at the end of the 90-day period. The conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, the Rent Administrator shall, by order served upon the parties at least 10 days prior to the expiration of the 90 days, make a provisional finding as to the rent ceiling adjustment justified by the order, if any. Except to the extent modified by this section, the adjustment procedures of § 45-2526 shall apply to any adjustment.

(d) If on July 17, 1985 the rent being charged exceeds the allowable rent ceiling, that rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due. This subsection shall not apply to any rent administratively approved under the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980, or any rent increase authorized by a court of competent jurisdiction. The housing provider shall notify the tenant in writing of any decrease required under this chapter before the effective date of the decrease.

(e) A tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 45-2526. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment, except that a tenant must challenge the new base rent as provided in § 45-2503(4) within 6 months from the date the housing provider files his base rent as required by this chapter.

(f)(1) Unless permitted under § 45-2520(j), a capital improvement increase in the rent charged as provided under § 45-2520 shall not be assessed against any elderly or disabled tenant who leases and occupies a rental unit regulated under this chapter.

(2) For the purposes of this section and § 45-2520, the term:

(A) "Disabled tenant" means an individual who has a medically determinable physical impairment, including blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation, and has an income of not more than \$40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to § 45-2520.

(B) "Elderly tenant" means an individual who is, and who proves to the satisfaction of the Rent Administrator that he or she is, at least 62 years of age, and has an income of not more than \$40,000 per year at the time of approval by the Rent Administrator of a petition for capital improvements pursuant to § 45-2520.

(3) Paragraphs (1) and (2) of this subsection shall not affect any increase in the rent ceiling for any rental unit regulated under this chapter.

(g)(1) Any housing provider who provides housing to an elderly or disabled tenant and is not permitted under § 45-2520 to implement, and does not implement, all or any portion of any increase in rent charged based on capital improvements provided under § 45-2520 shall receive a tax credit for each unit occupied by an elderly tenant, as determined by the Rent Administrator under § 45-2520, in the amount of \$1 for each \$1 of the capital improvement rent increase granted by the Rent Administrator that is not implemented. The credit shall be taken against the next installment or installments of real property taxes payable to the District of Columbia coming due with respect to the housing accommodation, inclusive of the land on which it is located.

(2) If an elderly or disabled tenant exempted from capital improvement rent increases pursuant to this chapter should cease to reside in a rental unit, the tax credit allowed to the housing provider for that rental unit shall also cease. If another eligible elderly or disabled tenant becomes a resident of the same rental unit, the housing provider shall provide the exemption to the new tenant, and the tax credit shall continue to be effective. (July 17, 1985, D.C. Law 6-10, § 206, 32 DCR 3089; Sept. 26, 1992, D.C. Law 9-154, § 2(a), 39 DCR 5673.)

**Cross references.** — As to definitions of Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, see § 45-2503.

**Section references.** — This section is referred to in §§ 45-1613, 45-2503, 45-2512, 45-2515, 45-2517, 45-2518, 45-2519, 45-2520, 45-2522, 45-2526, and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 9-154.** — Law 9-154, the "Rental Housing Act of 1985 Elderly and Disabled Tenant Rental Housing Capital Improvement Relief Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-74, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively.

Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-246 and transmitted to both Houses of Congress for review. D.C. Law 9-154 became effective on September 26, 1992.

**Termination of Law 6-10.** — See note to § 45-2511.

**Calculation of rent increase.** — If an initial rent increase is improper (or is rescinded or nullified) and a later increase builds upon the first, the amount of the second increase must be recalculated. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 650 A.2d 667 (1994).*

**Rent ceiling equal to base rent in absence of proper registration.** — Since the rent of a unit may not be increased above the base rent unless the unit is properly registered, the Rental Housing Commission properly determined that the rent ceiling for the unit was

equal to the base rent. *Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).*

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. *Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).*

**Hardship petition required.** — Where landlord withdrew a hardship petition while it was pending before the Rent Administrator on remand, the rent ceiling increase authorized by the petition was a nullity. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 650 A.2d 667 (1994).*

**Proponent of hardship petition bears burden of proof.** — Where an election to seek a rent adjustment through a hardship petition has been made pursuant to subsection (c) of this section, the proponent of the petition bears the burden of proof. *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 476 A.2d 679 (1984).*

**Reduction in rent ceiling and rollback of rent distinguished.** — A reduction in the rent ceiling reduces the maximum amount which a landlord may charge as rent; a rollback of rent, as a sanction for rental housing law violations, lowers the amount of rent paid, but does not affect the rent ceiling. *Afshar v. District of Columbia Rental Hous. Comm'n, App. D.C., 504 A.2d 1105 (1986).*

**Primary jurisdiction of Rental Housing Commission precludes adjudication of**

**rent ceiling in action for possession in Superior Court** and requires its adjudication before the Rental Accommodations Office. *Yasuna v. District of Columbia Rental Hous. Comm'n, App. D.C., 504 A.2d 605 (1986).*

**Abatement of housing violations.** — In a possessory action, the trial court quite properly rules upon the issue of whether the housing violations had been abated as required in the rent increase order. Like the issue of the amount of rent abatement by reason of housing violations that issue is certainly within the competence of the Superior Court, and the doctrine of primary jurisdiction does not apply to it. *Robinson v. Edwin B. Feldman Co., App. D.C., 514 A.2d 799 (1986).*

**Rent Administrator's delay in rendering decisions.** — See *Harris v. District of Columbia Rental Hous. Comm'n, App. D.C., 505 A.2d 66 (1986).*

**Former § 45-1517 cited** in *Delwin Realty Co. v. District of Columbia Hous. Comm'n, App. D.C., 458 A.2d 58 (1983); Drayton v. Poretsky Mgt., Inc., App. D.C., 462 A.2d 1115 (1983); Rhodes v. Quaorm, App. D.C., 465 A.2d 370 (1983); Weaver Bros. v. District of Columbia Rental Hous. Comm'n, App. D.C., 473 A.2d 384 (1984); Gibson v. Johnson, App. D.C., 492 A.2d 574 (1985).*

**Cited** in *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 550 A.2d 51 (1988); Tenants of Minn. Gardens, Inc. v. District of Columbia Rental Hous. Comm'n, 570 A.2d 1194 (1990); Hanson v. District of Columbia Rental Hous. Comm'n, App. D.C., 584 A.2d 592 (1991); Camacho v. 1440 Rhode Island Ave. Corp., App. D.C., 620 A.2d 242 (1993); Mack v. Zalco Realty, Inc., App. D.C., 630 A.2d 1136 (1993).*

## § 45-2517. Adjustments in rent ceiling.

The rent ceiling for a particular rental unit computed according to the procedures specified in § 45-2516 may be increased or decreased, as the case may be:

- (1) According to § 45-2520 to allow for the cost of capital improvements;
- (2) According to § 45-2521 to allow for any increase or decrease of related services and facilities;
- (3) According to any final order of hardship adjustment permitted under § 45-2522;
- (4) According to § 45-2523 because of a vacancy;
- (5) According to § 45-2524 because of substantial rehabilitation; or
- (6) According to § 45-2525 because of a voluntary agreement. (July 17, 1985, D.C. Law 6-10, § 207, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2518 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Reduction in rent ceiling and rollback of rent distinguished.** — A reduction in the rent ceiling reduces the maximum amount which a landlord may charge as rent; a rollback of rent, as a sanction for rental housing law violations, lowers the amount of rent paid, but does not affect the rent ceiling. *Afshar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 504 A.2d 1105 (1986).

**Former § 45-1518 cited** in *Drayton v. Poretsky Mgt., Inc.*, App. D.C., 462 A.2d 1115 (1983); *Rhodes v. Quaorm*, App. D.C., 465 A.2d 370 (1983).

**Cited** in *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 550 A.2d 51 (1988).

## § 45-2518. Increases above base rent.

(a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:

(A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures;

(B) The housing accommodation is registered in accordance with § 45-2515;

(C) The housing provider of the housing accommodation is properly licensed under a statute or regulations if the statute or regulations require licensing;

(D) The manager of the accommodation, when other than the housing provider, is properly registered under the housing regulations if the regulations require registration; and

(E) Notice of the increase complies with § 45-2594.

(2) Where the Rent Administrator finds there have been excessive and prolonged violations of the housing regulations affecting the health, safety, and security of the tenants or the habitability of the housing accommodation in which the tenants reside and that the housing provider has failed to correct the violations, the Rent Administrator may roll back the rents for the affected rental units to an amount which shall not be less than the September 1, 1983, base rent for the rental units until the violations have been abated.

(b) A housing accommodation and each of the rental units in the housing accommodation shall be considered to be in substantial compliance with the housing regulations if:

(1) For purposes of the adjustments made in the rent ceiling in §§ 45-2516 and 45-2517, all substantial violations cited at the time of the last inspection of the housing accommodation by the Department of Consumer and

Regulatory Affairs before the effective date of the increase were abated within a 45-day period following the issuance of the citations or that time granted by the Department of Consumer and Regulatory Affairs, and the Department of Consumer and Regulatory Affairs has certified the abatement, or the housing provider or the tenant has certified the abatement and has presented evidence to substantiate the certification. No certification of abatement shall establish compliance with the housing regulations unless the tenants have been given a 10-day notice and an opportunity to contest the certification; and

(2) For purposes of the filing of petitions for adjustments in the rent ceiling as prescribed in § 45-2526, the housing accommodation and each of the rental units in the housing accommodation shall have been inspected at the request of each housing provider by the Department of Consumer and Regulatory Affairs within the 30 days immediately preceding the filing of a petition for adjustment.

(c) A tenant of a housing accommodation who, after receipt of not less than 5 days written notice that the housing provider desires an inspection of the tenant's rental unit for the purpose of determining whether the housing accommodation is in substantial compliance with the housing regulations, refuses without good cause to admit an employee of the Department of Consumer and Regulatory Affairs for the purpose of inspecting the tenant's rental unit, or who refuses without good cause to admit the housing provider or the housing provider's employee or contractor for the purpose of abating any violation of the housing regulations cited by the Department of Consumer and Regulatory Affairs, will be considered to have waived the right to challenge the validity of the proposed adjustment for reasons that the rental unit occupied by the tenant is not in substantial compliance with the housing regulations.

(d) Nothing in this section shall be construed to limit or abrogate a tenant's right to initiate any lawful action to correct any violation in the tenant's rental unit or in the housing accommodation in which that rental unit is located.

(e) Notwithstanding any other provision of this chapter, no rent shall be adjusted under this chapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for the rental unit for the term of the written lease or rental agreement.

(f) Any notice of an adjustment under § 45-2516 shall contain a statement of the current rent, the increased rent, and the utilities covered by the rent which justify the adjustment or other justification for the rent increase. The notice shall also include a summary of tenant rights under this chapter and a list of sources of technical assistance as published in the District of Columbia Register by the Mayor.

(g) No adjustments in rent under this chapter may be implemented until a full 180 days have elapsed since any prior adjustment.

(h)(1) One year from March 16, 1993, unless otherwise ordered by the Rent Administrator, each adjustment in rent charged permitted by this section may implement not more than 1 authorized and previously unimplemented rent ceiling adjustment. If the difference between the rent ceiling and the rent charged for the rental unit consists of all or a portion of 1 previously unimplemented rent ceiling adjustment, the housing provider may elect to implement all or a portion of the difference.

(2) Nothing in this subsection shall be construed to prevent a housing provider, at his or her election, from delaying the implementation of any rent ceiling adjustment, or from implementing less than the full amount of any rent ceiling adjustment. A rent ceiling adjustment, or portion thereof, which remains unimplemented shall not expire and shall not be deemed forfeited or otherwise diminished. (July 17, 1985, D.C. Law 6-10, § 208, 32 DCR 3089; Mar. 16, 1993, D.C. Law 9-191, § 2, 39 DCR 9005.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2519, and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 9-191.** — Law 9-191, the “Unitary Rent Ceiling Adjustment Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-305, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-312 and transmitted to both Houses of Congress for its review. D.C. Law 9-191 became effective on March 16, 1993.

**Termination of Law 6-10.** — See note to § 45-2511.

**Commission was not estopped by landlord's failure to comply with law.** — Landlord's failure to obtain a Certificate of Occupancy for a 5-unit apartment house and to appear at the Rental Accommodations and Conversion Division of the Department of Consumer and Regulatory Affairs for over 8 years after the start of rent control was unjustified, and his argument that the Rental Housing Commission is estopped from imposing damages on him for failure to register is utterly meritless. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Consideration of housing code violations.** — Case concerning rent allegedly due and owing former landlords was erroneously withdrawn from jury consideration on a critical issue of material fact, namely, whether certain allegedly substantial housing code violations had been abated at the time the landlords instituted a 170% increase in monthly rent; thus, judgment was reversed. *McKenzie v. McCulloch*, App. D.C., 634 A.2d 430 (1993).

**Rent ceiling equal to base rent in absence of proper registration.** — Since the

rent of a unit may not be increased above the base rent unless the unit is properly registered, the Rental Housing Commission properly determined that the rent ceiling for the unit was equal to the base rent. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**More than one increase in rent ceiling within 180 days not precluded.** — While this section prohibits more than one increase within 180 days in the rent actually charged, it does not preclude the landlord from putting into effect more than one increase in the rent ceiling. *Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 550 A.2d 51 (1988).

**Noncompliance with notice provisions.** — A landlord's failure to comply with the 10-day notice provision does not invalidate a subsequent rental increase absent a showing by the tenants that the rental accommodation was not in substantial compliance with the Housing Code at the time of the increase. *Nwankwo v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 827 (1988) (decision under prior law).

**Rent increase improper.** — Where the first increase was improper and the second increase was built upon the first, the amount of the second increase was also improper. However, an increase if properly calculated, could be imposed. *Kitchings v. District of Columbia Rental Hous. Comm'n*, App. D.C., 588 A.2d 263 (1991) (decision under prior law).

**Former § 45-1519 cited** in *Rhodes v. Quaorm*, App. D.C., 465 A.2d 370 (1983); *District Properties Assocs. v. District of Columbia*, 743 F.2d 21 (D.C. Cir. 1984); *Weaver Bros. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 473 A.2d 384 (1984).

**Cited** in *Tenants of Minn. Gardens, Inc. v. District of Columbia Rental Hous. Comm'n*, 570 A.2d 1194 (1990); *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 585 A.2d 1330 (1991).

## § 45-2519. Rent ceiling upon termination of exemption and for newly covered rental units.

(a) Except as provided in subsection (c) of this section, the rent ceiling for any rental unit in a housing accommodation exempted by § 45-2515, except

subsection (a)(2) or (a)(7) of that section, upon the expiration or termination of the exemption, shall be the average rent charged during the last 6 consecutive months of the exemption, increased by no more than 5% of the average rent charged during the last 6 consecutive months of the exemption. The increase may be effected only in accordance with the procedures specified in §§ 45-2518 and 45-2594.

(b) A structure or building, including the land appurtenant, which is located in the District in which 1 or more rental units as defined in § 45-2503(33) are established after July 17, 1985, shall subsequently be defined as a "housing accommodation" for the purposes of this chapter. If any rental unit in such a housing accommodation is not otherwise exempted by 1 of the provisions of § 45-2515, the rent ceiling for the initial leasing period or the first year of tenancy, whichever is shorter, shall be determined by the housing provider and is considered to be the equivalent of making the computations specified in § 45-2516.

(c) The rent ceilings for any rental unit exempted under § 45-2515(a)(5) upon the expiration or termination of the exemption shall be the rent ceiling on the date the unit became exempt plus each subsequent adjustment of general applicability authorized under § 45-2516(b). (July 17, 1985, D.C. Law 6-10, § 209, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize land-

lord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

## § 45-2520. Petitions for capital improvements.

(a) On petition by the housing provider, the Rent Administrator may approve a rent adjustment to cover the cost of capital improvements to a rental unit or housing accommodation if:

(1) The improvement would protect or enhance the health, safety, and security of the tenants or the habitability of the housing accommodation; or

(2) The improvement will effect a net saving in the use of energy by the housing accommodation, or is intended to comply with applicable environmental protection regulations, if any savings in energy costs are passed on to the tenants.

(b) The housing provider shall establish to the satisfaction of the Rent Administrator:

(1) That the improvement would be considered depreciable under the Internal Revenue Code (26 U.S.C.);

(2) The amount and cost of the improvement including interest and service charges; and

(3) That required governmental permits and approvals have been secured.

(c) Any decision of the Rent Administrator under this section shall determine the adjustment of the rent ceiling:

(1) In the case of building-wide major capital improvement, by dividing the cost over a 96-month period of amortization and by dividing the result by the number of rental units in the housing accommodation. No increase under this paragraph may exceed 20% above the current rent ceiling;

(2) In the case of limited improvements to 1 or more rental units in a housing accommodation, by dividing the cost over a 64-month period of amortization and by dividing this result by the number of rental units receiving the improvement. No increase under this paragraph may exceed 15% above the current rent ceiling. The Rent Administrator shall make a determination that the interests of the affected tenants are being protected; and

(3) In the case of a rent increase included as part of the rent ceiling or base rent for a capital improvement after October 19, 1989, the rent increase is temporary and is abated as to each tenant upon recovery of all costs of the capital improvement, including interest and service charges. The rent increase shall not be calculated as part of either the base rent or rent ceiling of a tenant when determining the amount of rent charged. When the housing provider has recovered all costs, including interest and service charges, the housing provider shall recompute and adjust the rent charged to reflect the abatement of the capital improvement rent increase.

(d) Plans, contracts, specifications, and permits relating to capital improvements shall be retained for 1 year by the housing provider or its designated agent for inspection by affected tenants as the tenants may request at the housing provider's place of business in the District during working hours. If the housing provider does not have a place of business in the District, the plans, contracts, specifications, and permits relating to the capital improvements shall be made available upon request by the affected tenants at the Rental Accommodations Division.

(e)(1) A decision by the Rent Administrator on a rent adjustment under this section shall be rendered within 60 days after receipt of a complete petition for capital improvement.

(2) Failure of the Rent Administrator to render a decision pursuant to this section within the 60-day period shall operate to allow the petitioner to proceed with a capital improvement.

(f) Any tenant displaced from a rental unit by the capital improvement of the unit or the housing accommodation under this section shall have a right to rerent the rental unit immediately upon the completion of the work.

(g) The housing provider may make capital improvements to the property before the approval of the rent adjustment by the Rent Administrator for the capital improvements where the capital improvements are immediately necessary to maintain the health or safety of the tenants.

(h) A housing provider may adjust the rent ceiling for any rental unit to provide for the cost of any capital improvements which are required by provisions of any federal or local statute or regulation becoming effective after October 30, 1980, amortized over the useful life of the improvements, and the cost of the improvements applied on an equal basis to those rental units within

the housing accommodation which benefit from the improvement, by filing with the Division a certificate of calculation for mandated capital improvement increase. The certificate shall establish:

(1) That the improvement is required by the provisions of a federal or District statute or regulation becoming effective after October 30, 1980;

(2) The amount of the cost of the improvements; and

(3) That required governmental permits and approvals have been secured.

(i) The housing provider may petition the Rent Administrator for approval of the rent adjustment for any capital improvements made under subsection (g) of this section, if the petition is filed with the Rent Administrator within 10 calendar days from the installation of the capital improvements.

(j) The housing provider may petition the Rent Administrator to assess capital improvement increases in the rent charged against elderly and disabled tenants, and the Rent Administrator shall approve the petition if the housing provider proves to the satisfaction of the Rent Administrator that the amount which would be collectible from elderly and disabled tenants at the housing accommodation, but for the provisions of § 45-2516(f), would exceed the amount of real property taxes that would be payable during the calendar year with respect to the housing accommodation, but for the provisions of § 45-2516(g). (July 17, 1985, D.C. Law 6-10, § 210, 32 DCR 3089; Oct. 19, 1989, D.C. Law 8-48, § 2, 36 DCR 5788; Sept. 26, 1992, D.C. Law 9-154, § 2(b), 39 DCR 5673.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2516, 45-2517, 45-2526, and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 8-48.** — Law 8-48, the “Rental Housing Act of 1985 Capital Improvements Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-106, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-81 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-154.** — See note to § 22-2516.

**Termination of Law 6-10.** — See note to § 45-2511.

**Application of Law 9-154.** — Section 3 of D.C. Law 9-154 provided that the act shall not apply to any increase in a rent ceiling for a rental unit, or to any increase in the rent charged for a rental unit, when the capital improvement petition has been approved by the Rent Administrator and the resultant rent increase was implemented prior to September 26, 1992.

**Purpose.** — The plain meaning of this section, simply put, requires that all proposed

improvements increase the habitability of the housing accommodation. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994).*

**“Habitability.”** — Definition of habitability as being limited to items (1) specifically mentioned in the housing code, or (2) already existing in the rental unit at the time of leasing, contradicts the ordinary and plain meaning of the language set forth in this section. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994).*

**“Immediately necessary.”** — The ultimate judgment of whether improvements are “immediately necessary” under subsection (g) is at best a mixed one of law and fact, as to which the commission must make its own determination while deferring to the subsidiary findings of the examiner. *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991).*

**Subsection (c) construed.** — Under subsection (c), the legislative plan treats all rental units alike. Although the statute does not explicitly say so, the evident import of its words is that all of the units are to be assessed equally, subject to the 20% limitation. There is nothing in the statute requiring allocation of the costs of a capital improvement to particular units on the basis of the resident's actual use of that

improvement. 1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 306 (1990).

**Speed at which provider makes improvements not bar to recourse under subsection (g).** — The fact that the provider has not moved as expeditiously as a hypothetical prudent man would do in similar circumstances cannot bar recourse to subsection (g) if the objective facts are that the correction is immediately necessary to protect the health and safety of the tenants. *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991)*.

**Nature of improvements.** — All improvements proposed in connection with a capital improvement petition should not automatically be approved merely because the improvements are newer than those that they replace, or because the proposed improvements will add new features in the housing accommodation which do not presently exist. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994)*.

Inherent in the determination of whether a proposed improvement enhances the habitability of the housing accommodation is the requirement to balance the need for moderately priced housing against the housing provider's desire to realize a return on their investment. *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n, App. D.C., 649 A.2d 1076 (1994)*.

**Improvements prior to expiration of 60-day period.** — Subsection (e)(2) can reasonably be interpreted to mean that, absent permission from the Rent Administrator, a capital improvements petitioner is not allowed to proceed before expiration of the 60-day period. *Lenkin Co. Mgt., Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 642 A.2d 1282 (1994)*.

**Jurisdiction.** — Decisions of the D.C. Rental Housing Commission, reversing the hearing examiners' decisions to grant capital improvement petitions under this section, were not final orders; therefore, the court lacked jurisdiction over this issue. *Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n, App. D.C., 631 A.2d 415 (1993)*.

**Burden of proof.** — A landlord is required to present evidence that the required permits have been obtained or to demonstrate that no permits are required as part of the *prima facie* showing for an increased rent ceiling based on capital improvements. *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, App. D.C., 590 A.2d 1043 (1991)*.

Tenants had the burden of proving that contractor's fee was a kickback and to support their challenge with something more than unsubstantiated allegations, because contractors' fees in cases seeking rent increases for capital

improvements are customary, or at least not unusual, and because there is nothing in any pertinent statute which requires a landlord to provide additional detail regarding such an expense. *Columbia Realty Venture v. District of Columbia Rental Hous. Comm'n, App. D.C., 590 A.2d 1043 (1991)*.

**Expert testimony.** — There was no basis for disturbing the commission's judgment that the roof improvements bore a reasonable relationship to a serious health hazard, where there was essentially uncontradicted testimony by the president of an engineering firm consulted by the housing provider and the engineering consultant concerning the necessity of repairs. *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991)*.

**Failure to secure construction permit.** — Since no permit would have been necessary under the construction code, the failure of the housing provider to establish that such a permit had been secured was not a ground for dismissal of the petitions for review of grant of rent increases. *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991)*.

**Compliance with inspection requirement.** — Compliance with the inspection requirement does not appear among the facts in this section which the housing provider shall establish to the satisfaction of the rent administrator to gain an increase in the rent ceiling covering the cost of capital improvements, but rather, it appears in § 45-2518 as part of the definition of substantial compliance with the housing regulations. *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991)*.

**Limits of judicial function.** — While the Rental Housing Act is a remedial statute which must be liberally construed to achieve its purposes, it must be recognized that the statutory formula could work an injustice in an individual case. It is not within the judicial function, however, to rewrite a statute, or to supply omissions in it, in order to make it more "fair." *1841 Columbia Rd. Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 306 (1990)*.

**Pending appeals.** — The Rental Housing Commission was not compelled to automatically stay the implementation of an approved capital improvement rent increase. *Cafritz Co. v. District of Columbia Rental Hous. Comm'n, App. D.C., 615 A.2d 222 (1992)*.

**Tenants' request for a reduction of rent was not properly before Housing Commission** in the context of a capital improvement petition filed by the landlord. *Tenants of 2301 E St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 580 A.2d 622 (1990)*.

**Cited** in Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987); Winchester Van Buren Tenants Ass'n v. District of Columbia Rental Hous.

Comm'n, App. D.C., 550 A.2d 51 (1988); Tenants of 500 23rd St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 617 A.2d 486 (1992).

## § 45-2521. Services and facilities.

If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities. (July 17, 1985, D.C. Law 6-10, § 211, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(c), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2517, 45-2526 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-192.** — See note to § 45-2515.

**Termination of Law 6-10.** — See note to § 45-2511.

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental

Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).

**Cited** in Camacho v. 1440 Rhode Island Ave. Corp., App. D.C., 620 A.2d 242 (1993).

## § 45-2522. Hardship petition.

(a) Where an election has been made under § 45-2516(c) to seek a rent adjustment through a hardship petition, the Rent Administrator shall, after review of the figures and computations set forth in the housing provider's petition, allow additional increases in rent which would generate no more than a 12% rate of return computed according to subsection (b) of this section.

(b) In determining the rate of return for each housing accommodation, the following formula, computed over a base period of the 12 consecutive months within 15 months preceding the filing of a petition under this chapter, shall be used to:

(1) Obtain the net income by subtracting from the sum of maximum possible rental income which can be derived from a housing accommodation to which this section applies and the maximum amount of all other income which can be derived from the housing accommodation the following:

(A) The operating expenses, but the following items shall not be allowed as operating expenses:

(i) Membership fees in organizations established to influence legislation and regulations;

(ii) Contributions to lobbying efforts;

(iii) Contributions for legal fees in the prosecution of class action cases;

(iv) Political contributions to candidates for office;

(v) Mortgage principal payments;

(vi) Maintenance expenses for which the housing provider has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method;

(vii) Attorney's fees charged for services connected with counseling or litigation related to actions brought by the District government due to the housing provider's repeated failure to comply with applicable housing regulations as evidenced by violation notices issued by the Department of Consumer and Regulatory Affairs; and

(viii) Any expenses for which the tenant has lawfully paid directly;

(B) The management fee, where applicable, of not more than 6% of the maximum rental income of the housing accommodation unless an additional amount is approved by the Rent Administrator as follows:

(i) The housing provider shall first file with the Rent Administrator a petition which contains information the Rent Administrator may require, including, but not limited to, the name of the payee; and

(ii) If the Rent Administrator determines, based on the petition and other information the Rent Administrator may require, that the excess over 6% of maximum possible income or part of income is reasonable, the Rent Administrator may permit the same excess or so much of the excess as is reasonable;

(C) Property taxes;

(D) Depreciation expenses to the extent reflected in decreased real property tax assessments;

(E) Vacancy losses for the housing accommodation of not more than 6% of the maximum rental housing income of the housing accommodation unless an additional amount is approved by the Rent Administrator;

(F) Uncollected rents; and

(G) Interest payments;

(2) Then, divide the net income by the housing provider's equity in the housing accommodation to determine the rate of return.

(c) The Rent Administrator shall accord an expedited review process for a petition filed under this section and shall issue and publish a final decision within 90 days after the petition has been filed. If the Rent Administrator does not render a final decision within 90 days from the date the petition is filed, the rent ceiling adjustment requested in the petition may be conditionally implemented by the housing provider. The conditional rent ceiling adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, and the Rent Administrator, by order served upon the parties at least 10 days prior to the expiration of 90 days, makes a provisional finding as to the rent ceiling adjustment justified by the petition, the housing provider may implement only the amount of the rent ceiling adjustment authorized by the order. Except to the extent modified by this subsection, the provisions of § 45-2526 shall apply to any adjustment under this section. (July 17, 1985, D.C. Law 6-10, § 212, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2516, 45-2517, 45-2523, 45-2526 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Decision to apply hardship provision to single-unit landlords** is not inconsistent with the purpose of rent control. *Liuksila v. District of Columbia Rental Hous. Comm'n*, App. D.C., 503 A.2d 666 (1986).

**Effect of hardship petition granted under Rental Housing Act of 1977 (D.C. Law 2-54) on rent ceiling.** — See *Afshar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 504 A.2d 1105 (1986).

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Establishment of rent increase.** — If an initial rent increase is improper (or is rescinded or nullified) and a later increase builds upon the first, the amount of the second increase must be recalculated. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 650 A.2d 667 (1994).

**Operating expenses incurred but not paid were not includable in petition.** — Landlord was not entitled to estimate and include in the hardship petition operating costs incurred but not paid during the reporting period but could include expenses paid within the reporting period, even though they did not benefit the reporting period, where landlord operated under cash method of accounting. *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 476 A.2d 679 (1984).

**Costs of new appliances and fixtures are not operating expenses.** — Costs of new appliances and fixtures were to be treated as capital expenditures rather than routine operating expenses so that these supply expenditures constituted replacement costs to be amortized over their useful life. *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 476 A.2d 679 (1984).

**Equity of prior owner inapplicable to current rate of return.** — The Rental Housing Commission correctly found that a prior owner's equity in the property could not be used to determine the current landlord's rate of return. *Kates v. District of Columbia Rental*

Hous. Comm'n

App. D.C., 630 A.2d 1131 (1993).

**Deduction of interest payments.** — Where Rental Housing Commission held that landlord who refinanced his property with a second trust was not entitled, in calculating his income from the property, to deduct the interest from the second trust because he failed to demonstrate that the borrowed money had been reinvested in the premises, Commission's decision and interpretation were incompatible with the plain language of this section. *James Parreco & Son v. District of Columbia Rental Hous. Comm'n*, App. D.C., 567 A.2d 43 (1989).

**Landlord held not entitled to remand on issue of management fees** in hardship petition where landlord failed to provide Rent Administrator with substantive financial records concerning its management expenditures. *Wire Properties, Inc. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 476 A.2d 679 (1984).

**Abatement of housing violations.** — In a possessory action, the trial court quite properly rules upon the issue of whether the housing violations had been abated as required in the rent increase order. Like the issue of the amount of rent abatement by reason of housing violations that issue is certainly within the competence of the Superior Court, and the doctrine of primary jurisdiction does not apply to it. *Robinson v. Edwin B. Feldman Co.*, App. D.C., 514 A.2d 799 (1986).

**Effect of initial compliance with conditions.** — Where the landlord initially decided to comply with the Rent Administrator's conditions, rather than to appeal their legality to the Rental Housing Commission, a failure to exhaust the available administrative remedies resulted, such that, in the landlord's action for possession based on the conditionally approved increase, he was bound by those conditions. *Rhodes v. Quaorm*, App. D.C., 465 A.2d 370 (1983).

**Judicial review.** — Ruling on request for substantial hardship rent increase was not entitled to judicial review until the Rent Administrator had issued his final decision; the Administrative Procedure Act provides a right to judicial review only for final agency orders. *Tenants of 1255 N.H. Ave., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 647 A.2d 70 (1994).

**Effect of withdrawal of hardship petition.** — Where landlord withdrew a hardship petition while it was pending before the Rent Administrator on remand, the rent ceiling increase authorized by the petition was a nullity. *Tenants of 5912 14th St. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 650 A.2d 667 (1994).

**Former § 45-1523 cited** in *District Properties Assocs. v. District of Columbia*, 743 F.2d 21 (D.C. Cir. 1984).

**Cited** in Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989); Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990); Tenants of 2301 E St., N.W. v. District of Columbia

Rental Hous. Comm'n, App. D.C., 580 A.2d 622 (1990); Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 585 A.2d 1330 (1991); McKenzie v. McCulloch, App. D.C., 634 A.2d 430 (1993).

## § 45-2523. Vacant accommodation.

(a) When a tenant vacates a rental unit on the tenant's own initiative or as a result of a notice to vacate for nonpayment of rent, violation of an obligation of the tenant's tenancy, or use of the rental unit for illegal purpose or purposes as determined by a court of competent jurisdiction, the rent ceiling may, at the election of the housing provider, be adjusted to either:

(1) The rent ceiling which would otherwise be applicable to a rental unit under this chapter plus 12% of the ceiling once per 12-month period; or

(2) The rent ceiling of a substantially identical rental unit in the same housing accommodation, except that no increase under this section shall be permitted unless the housing accommodation has been registered under § 45-2515(d).

(b) For the purposes of this section, rental units shall be defined to be substantially identical where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height, if exposure and height have previously been factors in the amount of rent charged, and are in comparable physical condition.

(c) No rent increase under subsections (a)(1) and (a)(2) may be sought or granted within the 12-month period following the implementation of a hardship increase under § 45-2522. (July 17, 1985, D.C. Law 6-10, § 213, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(d), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2517, 45-2526 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-192.** — See note to § 45-2515.

**Termination of Law 6-10.** — See note to § 45-2511.

**Increase allowed only after unit has become vacant.** — A landlord is allowed to increase the rent ceiling for a rental unit only after it has in fact become vacant. Guerra v. District of Columbia Rental Hous. Comm'n, App. D.C., 501 A.2d 786 (1985).

**And where additional cost to landlord justifies increase.** — A vacancy increase is allowed only when there has been some additional cost to the landlord that would justify the increase. Guerra v. District of Columbia Rental Hous. Comm'n, App. D.C., 501 A.2d 786 (1985).

**Vacancy increase inapplicable where**

**subtenant remained in continuous possession.** — A landlord may not implement a vacancy increase in the rent ceiling for a rental unit when there has been a change in tenants, but the rental unit has never actually become vacant because a subtenant, common to both tenants, has remained in possession of the rental unit. Guerra v. District of Columbia Rental Hous. Comm'n, App. D.C., 501 A.2d 786 (1985).

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).

## § 45-2524. Substantial rehabilitation.

(a) If the Rent Administrator determines that (1) a rental unit is to be substantially rehabilitated, and (2) the rehabilitation is in the interest of the tenants of the unit and the housing accommodation in which the unit is located, the Rent Administrator may approve, contingent upon completion of the substantial rehabilitation, an increase in the rent ceiling for the rental unit, if the rent increase is no greater than the equivalent of 125% of the rent ceiling applicable to the rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications, and projected costs for the rehabilitation, which shall be made available to the Rent Administrator by the housing provider of the rental unit or housing accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors:

(1) The impact of the rehabilitation on the tenants of the unit or housing accommodation; and

(2) The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

(d) This section shall apply to the following:

(1) Any rental unit with respect to which a housing provider has notified the tenant, after July 17, 1985, of an intent to substantially rehabilitate; and

(2) Any rental unit with respect to which, before July 17, 1985:

(A) The housing provider has notified the tenant of the intended substantial rehabilitation; and

(B) All the tenants have left. (July 17, 1985, D.C. Law 6-10, § 214, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2517, 45-2526, 45-2529.2 and 45-2551.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Establishment of rent ceiling prerequisite to imposition of penalties.** — Rental Housing Commission may not penalize landlord for his failure to comply with the procedures necessary for implementing rent increases when the agency refused to assist in the establishment of the prerequisite to taking lawful rent increases, namely, in the establishment of the appropriate rent ceilings. *Temple v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1024 (1987).

**Provision for substantial rehabilitation should be narrowly construed.** — Exemptions from coverage of the rent control statute are to be narrowly construed and the provision for substantial rehabilitation in this section, which effectively permits a landlord to escape the proscriptions of the act and substantially raise his rents, likewise ought to be given a parsimonious interpretation rather than an expansive one. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990).

**Section not a tenant-consent provision.** — This section is not a tenant-consent provision, and the approval of the tenants as such is not required, and it is sufficient for the landlord to show that the proposed rehabilitation is in the tenants' interest in the sense that they receive a benefit, and that the renovations are necessary to correct or improve the condition of the property. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 575 A.2d 1205 (1990).

**Petition for substantial rehabilitation.** — A petition for substantial rehabilitation may be approved without proof that existing conditions constitute a danger to the tenants' health, safety and welfare which cannot be remedied without major renovations. The existence or

nonexistence of such conditions, however, is not irrelevant, and must be one of the rent administrator's principal areas of inquiry. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990).*

## § 45-2525. Voluntary agreement.

(a) Seventy percent or more of the tenants of a housing accommodation may enter into a voluntary agreement with the housing provider:

- (1) To establish the rent ceiling;
- (2) To alter levels of related services and facilities; and
- (3) To provide for capital improvements and the elimination of deferred maintenance (ordinary repair).

(b) The voluntary agreement must be filed with the Rent Administrator and shall include the signature of each tenant, the number of each tenant's rental unit or apartment, the specific amount of increased rent each tenant will pay, if applicable, and a statement that the agreement was entered into voluntarily without any form of coercion on the part of the housing provider. If approved by the Rent Administrator the agreement shall be binding on the housing provider and on all tenants.

(c) Where the agreement filed with the Rent Administrator is to have the rent ceiling for all rental units in the housing accommodation adjusted by a specified percentage, the Rent Administrator shall immediately certify approval of the increase. (July 17, 1985, D.C. Law 6-10, § 215, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2517 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Tenant consent to rehabilitation not required.** — Section 45-2524 is not a tenant-consent provision, and the approval of the tenants as such is not required, and it is sufficient for the landlord to show that the proposed rehabilitation is in the tenants' interest in the sense that they receive a benefit, and that the renovations are necessary to correct or improve the condition of the property. *Tenants of 738 Longfellow St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 575 A.2d 1205 (1990).*

**Voluntary agreement was valid.** — Agreement was not invalid because the tenants

whose signatures were counted to make up the 70% required for approval did not all sign the same version of the agreement, where the two addenda did not change the central provisions of the voluntary agreement, but rather modified the agreement so as to enhance the rights of the tenants. *Davenport v. District of Columbia Rental Hous. Comm'n, App. D.C., 579 A.2d 1155 (1990).*

**Voluntary agreement was illegal.** — Where only 60% of the tenants signed the voluntary agreement to adjust rent ceiling, the decision of the Rental Housing Commission to invalidate it was in accordance with law. *Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).*

**Evidence was insufficient to prove housing provider engaged in coercion, misrepresentation or fraud.** *Davenport v. District of Columbia Rental Hous. Comm'n, App. D.C., 579 A.2d 1155 (1990).*

## § 45-2526. Adjustment procedure.

(a) The Rent Administrator shall consider adjustments allowed by §§ 45-2520, 45-2521, 45-2522, 45-2523, and 45-2524 or a challenge to a § 45-2516 adjustment, upon a petition filed by the housing provider or tenant. The petition shall be filed with the Rent Administrator on a form provided by the

Rent Administrator containing the information the Rent Administrator or the Rental Housing Commission may require. The Rent Administrator shall issue a decision and an order approving or denying, in whole or in part, each petition within 120 days after the petition is filed with the Rent Administrator. The time may be extended only by written agreement between the housing provider and tenant of the rental unit.

(b) Immediately upon receipt of the petition, the Rent Administrator shall notify the nonpetitioning party, housing provider or tenant, by certified mail or other form of service which assures delivery of the petition, of the right of either party to make, within 15 days after the receipt of the notice, a written request for a hearing on the petition. The Rent Administrator may deny the petition if the issue is moot or the petition does not comply with subsection (a) of this section.

(c) If a hearing is requested timely by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or other form of service which assures delivery at least 15 days before the commencement of the hearing. The notice shall inform each of the parties of the party's right to retain legal counsel to represent the party at the hearing.

(d) Each housing provider of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator, within 15 days after a demand is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator or the Rental Housing Commission may require.

(e) The Rent Administrator may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(f) The Rent Administrator may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under this section, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, or the Rental Housing Act of 1980 for adjustment to the same rental units within the 6 months immediately preceding the filing of the pending petition.

(g) All petitions filed under this section, all hearings held relating to the petitions, and all appeals taken from decisions of the Rent Administrator shall be considered and held according to the provisions of this section and title I of the District of Columbia Administrative Procedure Act. In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall prevail.

(h) Decisions of the Rent Administrator shall be made on the record relating to any petition filed with the Rent Administrator. An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Rental Housing Commission within 10 days after the decision of the Rent Administrator, or the Rental Housing Commission may review a decision of the Rent Administrator on its own initiative. The Rental Housing Commission may reverse, in whole or in part, any decision of the Rent Administrator which it finds to be arbitrary, capricious, an abuse of discretion, not in accordance with

the provisions of this chapter, or unsupported by substantial evidence on the record of the proceedings before the Rent Administrator, or it may affirm, in whole or in part, the Rent Administrator's decision. The Rental Housing Commission shall issue a decision with respect to an appeal within 30 days after the appeal is filed.

(i) No increase in rent allowed under this chapter shall be implemented unless the tenant concerned has been given written notice under § 45-2594.

(j) A copy of any decision made by the Rent Administrator, or by the Rental Housing Commission under this section shall be mailed by certified mail or other form of service which assures delivery of the decision to the parties.

(k) The Rent Administrator and, where applicable, the Rental Housing Commission shall accord priority to a housing provider hardship petition covering a housing accommodation for which the federal government is entitled to approve rent increases, where the processing of such a petition has not begun within 45 days immediately following the filing of the petition. Processing of the petitions shall begin no later than 5 days after receipt by the Rent Administrator of written requests from the housing provider and from the federal agency.

(l) No rent increase above that authorized by the Rent Administrator may be implemented by a housing provider during the pendency of an appeal by that housing provider to the Rental Housing Commission or the District of Columbia Court of Appeals where the appeal concerns the validity of that increase. (July 17, 1985, D.C. Law 6-10, § 216, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, §§ 13(e), (f), 33 DCR 7836.)

**Cross references.** — As to definitions of Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, see § 45-2503.

**Section references.** — This section is referred to in §§ 45-2503, 45-2515, 45-2516, 45-2518, 45-2522, and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-192.** — See note to § 45-2515.

**Termination of Law 6-10.** — See note to § 45-2511.

**References in text.** — The "District of Columbia Administrative Procedure Act," referred to in subsection (g), is Chapter 15 of Title I. Title I of the District of Columbia Administrative Procedure Act is subchapter 1 of Chapter 15 of Title 1.

**Applicability.** — Notice provisions of this section were inapplicable where landlord's appeal was not made under this section, as it was concerned solely with the landlord's eligibility for the small landlord exemption. Flores v. District of Columbia Rental Hous. Comm'n, App. D.C., 547 A.2d 1000 (1988), cert. denied, 490 U.S. 1081, 109 S. Ct. 2103, 104 L. Ed. 2d 664 (1989).

**Signature by leaseholder's spouse.** — The spouse of a leaseholder may not, absent

express authority, act as the leaseholder's agent and sign an agreement of tenants to voluntarily adjust their rent ceiling. Tenants of 1460 Euclid St. v. District of Columbia Rental Hous. Comm'n, App. D.C., 502 A.2d 470 (1985).

**Effect of initial compliance with conditions.** — Where the landlord initially decided to comply with the Rent Administrator's conditions, rather than to appeal their legality to the Rental Housing Commission, a failure to exhaust the available administrative remedies resulted, such that, in the landlord's action for possession based on the conditionally approved increase, he was bound by those conditions. Rhodes v. Quaorm, App. D.C., 465 A.2d 370 (1983).

**Procedure must be followed before resort to other review.** — Since this section provides a method of appeal from an administrative ruling, that method must be followed before resorting to any other system of review. C St. Tenants Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 552 A.2d 524 (1989).

**Date of decision is date of mailing for purposes of filing appeal.** Town Ctr. Mgt. v. District of Columbia Rental Hous. Comm'n, App. D.C., 496 A.2d 264 (1985).

If the decision is not issued in the presence of the parties, then an aggrieved party's time for

filings an appeal runs from the date the decision is mailed, with 3 extra days for the mailing. However, the burden is on the Rental Housing Commission to provide proof of the actual date of mailing, through certified mail or accurate entries pursuant to prescribed agency mailing procedures. *Town Ctr. Mgt. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 496 A.2d 264 (1985).

**Pending appeals.** — The Rental Housing Commission was not compelled to automatically stay the implementation of an approved

capital improvement rent increase. *Cafritz Co. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 615 A.2d 222 (1992).

**Former § 45-1527 cited** in *Drayton v. Poretsky Mgt., Inc.*, App. D.C., 462 A.2d 1115 (1983).

**Cited** in *Tenants of 500 23rd St. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 585 A.2d 1330 (1991); *Fort Chaplin Park Assocs. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 649 A.2d 1076 (1994).

## § 45-2527. Security deposit.

No person shall demand or receive a security deposit from any tenant for a rental unit occupied by the tenant upon July 17, 1985, where no security deposit had been demanded or received of the tenant for the rental unit before July 17, 1985, but this provision shall not prevent the collection of security deposits for newly constructed units or units exempted under § 45-2515(a)(4) and (7). Security deposits shall be collected pursuant to the Security Deposit Act, effective February 20, 1976 (D.C. Law 1-48; 14 DCMR 308 et seq.). (July 17, 1985, D.C. Law 6-10, § 217, 32 DCR 3089.)

**Cross references.** — As to security deposit regulations, see 14 DCMR §§ 308 to 311.

**Section references.** — This section is referred to in §§ 45-2503, 45-2515 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

## § 45-2528. Remedy.

The Rental Housing Commission, Rent Administrator, or any affected housing provider or tenant may commence a civil action in the Superior Court of the District of Columbia to enforce any rule or decision issued under this chapter. (July 17, 1985, D.C. Law 6-10, § 218, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Court should stay action pending result of administrative challenge.** — When there is pending before the Administrator or the Commission a challenge to a rent increase that bears upon the amount of rent owed by a tenant defending a possessory action brought for non-payment of rent, the Landlord and Tenant judge should stay the action to await the ruling of the Administrator or, if an appeal is taken to the Commission, then of that body. *Drayton v. Poretsky Mgt., Inc.*, App. D.C., 462 A.2d 1115 (1983).

**Appeal of Administrator's ruling to Commission required.** — A landlord who brings an action for possession of real estate

based on a tenant's failure to pay increased rent may not contest in Court the legality of the Rent Administrator's condition, without having appealed that ruling initially to the Commission. *Rhodes v. Quaorm*, App. D.C., 465 A.2d 370 (1983).

**Party may come directly to Court only to enforce, not challenge, decision of Administrator.** *Rhodes v. Quaorm*, App. D.C., 465 A.2d 370 (1983).

**Landlord and Tenant Branch is to assume that rent increase of general applicability is valid** for the purpose of determining the amount required of a tenant to effect equitable redemption unless a proceeding seeking review of, or otherwise challenging, a rent increase is actually pending before the Commission prior to the commencement of the Landlord and Tenant trial. *Drayton v. Poretsky Mgt., Inc.*, App. D.C., 462 A.2d 1115 (1983).

## § 45-2529. Judicial review.

Any person or class of persons aggrieved by a decision of the Rental Housing Commission, or by any failure on the part of the Rental Housing Commission or Rent Administrator to act within any time certain mandated by this chapter, may seek judicial review of the decision or an order compelling the decision by filing a petition for review in the District of Columbia Court of Appeals. (July 17, 1985, D.C. Law 6-10, § 219, 32 DCR 3089.)

**Section references.** — This section is referred to in §§ 45-2503, 45-2515 and 45-2529.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**Taking of appeal under 1980 Act.** — See Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, App. D.C., 505 A.2d 1310 (1986).

**Standing to bring enforcement action**

**under Rental Accommodations Act of 1975.** — See Strand v. Frenkel, App. D.C., 500 A.2d 1368 (1985).

**Former § 45-1530 cited** in Rhodes v. Quaorm, App. D.C., 465 A.2d 370 (1983).

**Cited** in Tenants of 500 23rd St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 617 A.2d 486 (1992); Brandywine Ltd. Partnership v. District of Columbia Rental Hous. Comm'n, App. D.C., 631 A.2d 415 (1993).

## § 45-2529.1. Report of Mayor.

(a) No later than October 1, 1988, the Mayor shall report to the Council on the continued need for the rent stabilization program.

(b) The report shall be prepared by a person not affiliated with the District government and shall contain:

(1) The number of new and renovated units which have been placed on the rental housing market since July 17, 1985;

(2) The number of new and renovated units it is anticipated will be placed on the rental housing market annually until 1996;

(3) An assessment of the effectiveness of the Tenant Assistance Program; the adequacy of monies appropriated for the program; and the projected costs of the Tenant Assistance Program in the absence of rent stabilization legislation;

(4) The impact of the rent stabilization program on the cost and supply of rental housing;

(5) An assessment of the present rent stabilization program in terms of its being understandable, efficient, inexpensive, equitable, and flexible;

(6) The impact of the present rent stabilization program upon small housing providers compared to large housing providers;

(7) The number of District residents living in substandard housing and their locations;

(8) An assessment of the impact of the proposed civil infractions law on housing code violations, if the law is enacted in a timely manner;

(9) An assessment of the probable impact on the private rental housing market and the present rent stabilization program of the following individual or combination of factors:

- (A) Vacancy decontrol;
- (B) Luxury decontrol;

(C) Increasing from 4 units to 10 units the maximum rental units exemption under § 45-2515(a)(3); and

(D) Tying the rent stabilization program to the amount of family income available for rent; and

(10) Any other information considered appropriate by the drafters of the report. (July 17, 1985, D.C. Law 6-10, § 220, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

**References in text.** — The “proposed civil infractions law,” referred to in paragraph (b)(8), was enacted as D.C. Law 6-42.

## § 45-2529.2. Certificate of assurance.

(a) Upon the issuance of any building permit for a housing accommodation to which § 45-2515(a)(2) or (4) applies after July 17, 1985, the Mayor shall at the request of the recipient of the building permit issue to the recipient thereof concurrently with the building permit a certificate of assurance containing the terms set forth in this section. Within 30 days of written request of the owner of any housing accommodation to which § 45-2515(a)(2) or (4) applies, the Mayor shall issue to the owner a certificate of assurance containing the terms set forth in this section.

(b) The certificate of assurance shall provide that in the event that any rental unit in any housing accommodation then existing or thereafter constructed on the property covered by the certificate is ever made subject to §§ 45-2515(f) through 45-2529, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the owner of the property shall have the right to recover annually from the District of Columbia for so long as the property is used as a housing accommodation, in accordance with subsection (c) of this section, the difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation. The certificate of assurance shall be executed by the Mayor and the recipient and shall obligate the recipient to use the recipient’s best efforts to construct a housing accommodation as expeditiously as possible on the property which is the subject thereof if there does not then exist a housing accommodation on the property. Each certificate of assurance shall provide that it shall become null and void in the event that a housing accommodation is not constructed on the property within 5 years of the issuance thereof and shall contain the definitions set forth in § 45-2503(1) and (3). The certificate of assurance shall be an irrevocable agreement in recordable form and constitute a covenant running with the land. The Mayor shall review the proposed form of the certificate of assurance with Council’s Committee on Consumer and Regulatory Affairs prior to its first use to ensure that the form will be legal, valid and enforceable, contain the terms provided for herein, and otherwise further its intended purpose of stimulating the addition of rental units to the District’s housing stock.

(c) The certificate of assurance shall provide that for so long as the property is used as a housing accommodation and is subject to §§ 45-2515(f) through

45-2529, or any future District of Columbia law limiting the amount of rent which a housing provider can lawfully demand or receive from a tenant, the annual difference between the annual fair market rental amount and the annual amount of rent that the owner of the property actually receives from the tenants in the housing accommodation shall be recoverable by the owner of the property by (1) taking a credit against any present or future District of Columbia real estate taxes payable by the owner of the property whether on the housing accommodation or other property located in the District of Columbia, or (2) seeking specific performances of the certificate of assurance against the District of Columbia, or damages for the breach thereof, in the Superior Court of the District of Columbia. If the Mayor considers the credit to be in excess of the amount the owner of the property is entitled to take as a credit hereunder, the Mayor shall notify the owner in writing of the amount of excess credit. If the Mayor and the owner of the property are unable to agree on the amount of the credit, the Mayor shall have the right to sue the owner in the Superior Court of the District of Columbia to recover any excess credit together with interest thereon at the rate of 18% per year from the date that the Mayor filed to recover such excess credit. Notwithstanding any other provision of District of Columbia law, the Mayor shall have no resort to any other remedy for nonpayment of real estate taxes (to the extent such nonpayment arises from a credit claimed hereunder) until a final judgment is rendered in favor of the Mayor in Superior Court of the District of Columbia. (July 17, 1985, D.C. Law 6-10, § 221, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2511.

### *Subchapter III. Tenant Assistance Program.*

#### **§ 45-2531. Definitions.**

For the purpose of this subchapter, the term:

(1) "Annual adjusted income" means income that remains after excluding:

(A) Four hundred eighty dollars (\$480) for each member of the family residing in the household, other than the head of the household or spouse, who is under 18 years of age or who is 18 years of age or older and is disabled, handicapped, or a full-time student; and

(B) Child care expenses to the extent necessary to enable another member of the family to be employed or to further the member's education.

(2) "Certificate of eligibility" means a document issued by the Department declaring a family to be eligible for participation in the Tenant Assistance Program and stating the terms and conditions for the family's participation.

(3) "Decent, safe, and sanitary housing" means housing which is in substantial compliance with the housing regulations, any other statute or regulation governing the condition of residential premises, and the requirements set forth in this subchapter.

(4) "Department" means the Department of Housing and Community Development, which is authorized to assist in the administration of the Tenant Assistance Program.

(5) "Eligible family" means an individual or a family residing and domiciled in the District which qualifies as a lower income family at the time it initially receives assistance under the Tenant Assistance Program.

(6) "Fair market rent" means the rent, and all maintenance, management, and other services which would be required to be paid in order to obtain privately owned, decent, safe, and sanitary rental housing of modest nonluxury nature with suitable amenities in the District. Fair market rents as established by the Department shall be published in the D.C. Register and shall vary for dwelling units of varying sizes and types, with differentials for new, rehabilitated, and existing units. For SRO housing the fair market rent shall be in a range from 75% to 100% of the 0-bedroom fair market rent.

(7) "Handicapped person" means a person who has a medically determinable mental or physical impairment, including blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation.

(8) "Lower-income family" means a household with a combined annual income in a manner to be determined by the Mayor, whose income does not exceed 80% of the median income for a family in the district, with adjustments for smaller and larger families. The Mayor may refer to income or consumer expenditure data of the United States Census Bureau or the United States Department of Labor to determine median income for the District or Standard Metropolitan Statistical Area (SMSA).

(9) "Request for lease approval" means a standard form on which the eligible family and the housing provider jointly request the Department to approve a dwelling unit for purposes of tenant assistance. The form shall require the housing provider to state the number of bedrooms in the unit and to certify the most recent rent charged.

(10) "Residing and domiciled" describes a person who resides in the District, pays income tax in the District, whose automobile is registered in the District, and, if a registered voter, votes in the District.

(11) Repealed.

(12) "Tenant assistance contract" means a written contract between the Department and a housing provider, in the form prescribed by the Mayor, in which the Department agrees to make tenant assistance payments to the housing provider (A) on behalf of a specific eligible family; or (B) for specific units to be held for and leased to families eligible for tenant assistance for the duration of the contract. (July 17, 1985, D.C. Law 6-10, § 301, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(a), (b), 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 2(a), (b), 34 DCR 6851; Mar. 17, 1993, D.C. Law 9-237, § 2(a), 40 DCR 617; Aug. 25, 1994, D.C. Law 10-155, § 2(b), 41 DCR 4873.)

**Section references.** — This section is referred to in §§ 45-2503 and 45-2535.

**Effect of amendments.** — D.C. Law 10-155 repealed (11).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — Law 7-48, the “Tenant Assistance Program Amendment Temporary Act of 1987,” was introduced in Council and assigned Bill No. 7-293. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-81 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-237.** — Law 9-237, the “Tenant Assistance Program Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-384, which was referred

to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-369 and transmitted to both Houses of Congress for its review. D.C. Law 9-237 became effective on March 17, 1993.

**Legislative history of Law 10-155.** — See note to § 45-2586.

**Cited** in Hornstein v. Barry, App. D.C., 560 A.2d 530 (1989); Chamberlain v. Barry, App. D.C., 606 A.2d 156 (1992); In re T.B., 120 WLR 1089 (Super. Ct. 1992).

## § 45-2532. Establishment of Tenant Assistance Program; designation of monies.

(a) For the purpose of aiding lower-income families in obtaining a decent place to live, the Mayor shall formulate and administer a Tenant Assistance Program as provided in this subchapter.

(b) There is authorized to be appropriated at least \$15 million for fiscal year 1987 with annual increases in the following fiscal years based upon need and the availability of revenues. Appropriations for the Tenant Assistance Program shall be classified and maintained as a proprietary fund and shall remain available until expended, without regard to fiscal year limitations. No money appropriated for the Tenant Assistance Program shall be expended for any purpose other than making tenant assistance payments and, when necessary, repayable advances for security deposits in accordance with this subchapter.

(c) If in any fiscal year the Mayor finds that tenant assistance payments will exceed available appropriations, the Mayor shall transmit to the Council proposed adjustments to eligibility criteria, income guidelines, or supplement payments to reduce payments under this subchapter to an amount not in excess of available appropriations.

(d) The Mayor is authorized to expend the annual appropriations provided by this section in the following manner:

(1)(A) The Mayor may enter into long-term tenant assistance contracts with housing providers. Payments obligated by long-term contracts may be made on an annual basis during the period of each contract from the annual appropriations for the Tenant Assistance Program. Each contract entered into pursuant to this paragraph shall obligate the housing provider, on an annual basis, for the duration of the contract to offer for lease and to lease a fixed number of rental units, which shall be specified in the contract, to families receiving tenant assistance, regardless of whether the same family leases the same unit throughout the contract period. Each contract shall obligate the Mayor to make tenant assistance payments to the housing provider for the duration of the contract in accordance with the terms of the contract and the requirements of this subchapter as long as the housing is in substantial compliance with the housing regulations. The contractual obligation of the Mayor shall be backed by the full faith and credit of the District to the same extent that applies to District contracts generally.

(B) In the case of contracts for rental units in existing housing accommodations, the length of the contract may be from 1 to 5 years. In the case of contracts for rental units in newly constructed or rehabilitated housing accommodations, the length of the contract may be from 1 to 15 years, with options to renew in 5-year increments.

(C) Consistent with the requirements of § 45-2584(d), distressed properties and new or rehabilitated vacant rental housing receiving assistance pursuant to subchapter VIII of this chapter shall have priority over other properties for the long-term contracts authorized by this paragraph.

(2) Repealed.

(3) The Mayor may expend funds from the annual appropriation to assist eligible families with a current valid lease of a rental unit that qualifies according to the provisions of this chapter. The Department shall announce the availability of the assistance authorized by this paragraph through notice to the District of Columbia Office on Aging, other relevant District agencies, and private organizations representing senior citizens or tenants in general.

(4) The Mayor shall not, by rule or otherwise, establish any set-aside procedure or allocate any fixed portion of Tenant Assistance Program funds or applications to be approved for any specific category of eligible families or any specific type of tenant assistance contract authorized by this subchapter.

(e) The Mayor shall issue rules consistent with this subchapter for the effective and efficient administration of the Tenant Assistance Program. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this subsection shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (July 17, 1985, D.C. Law 6-10, § 302, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § (3)(c)-(e), 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 2(c)-(e), 34 DCR 6851; Mar. 17, 1993, D.C. Law 9-237, § 2(b), (c), 40 DCR 617.)

**Section references.** — This section is referred to in § 45-2534.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Legislative history of Law 9-237.** — See note to § 45-2531.

**Appropriations approved.** — Public Law 101-518, 104 Stat. 2227, the District of Columbia Appropriations Act, 1991, provided that up

to \$275,000 within the 15 percent set-aside for special programs within the Tenant Assistance Program shall be targeted for the single-room occupancy initiative.

**Transfer of functions.** — The functions of the Department of Housing and Community Development relating to the Tenant Assistance Program were transferred to the Department of Public and Assisted Housing by Reorganization Plan No. 1 of 1987, effective December 15, 1987.

**Cited** in Chamberlain v. Barry, App. D.C., 606 A.2d 156 (1992).

**§ 45-2533. Authorization to enter into contracts for tenant assistance payments; determination of eligibility; procedure upon determination of eligibility.**

(a) The Mayor may enter into contracts to make rental assistance payments to housing providers of rental dwelling units on behalf of eligible families in accordance with this section. Chapter 11A of Title 1 shall not apply to the contracts authorized by this subchapter.

(b) Except as otherwise provided in this subsection, the fair market rents applicable to the Tenant Assistance Program shall be the fair market rents established annually by the U.S. Department of Housing and Urban Development (“HUD”) for new construction and substantial rehabilitation in the Washington, D.C., market. The Department, by rule, may establish the fair market rents for units in sizes for which there is no fair market rent established by HUD. If the Department, after reviewing the fair market rents established by HUD for the Washington, D.C., market, determines that the amounts do not accurately reflect fair market rents in the District, the Department may, by rule, adjust the amounts. If the proposed fair market rents vary from the fair market rents established by HUD, the Department shall submit a resolution for approval of the proposed fair market rents to the Council of the District of Columbia (“Council”) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution, in whole or in part, within this 45-day review period, the proposed resolution shall be deemed approved.

(c) Applications to participate in the Tenant Assistance Program shall be submitted to the Department and shall be in a form designated by the Department. The Department shall be responsible for verifying the sources of the family’s income and gathering information necessary for determining eligibility and the amount of the assistance payment. Priority shall be given to the elderly, the handicapped, single-parent households, and applicants who have completed any employment training course provided by any District agency.

(d) If an applicant is determined by the Department to be eligible and is selected for participation, the applicant shall be given a certificate of eligibility. At the same time, the family shall be given a certificate holder’s packet which contains a request for lease approval, a list of properties for rent, information concerning recently completed housing, if any, including the location, and other items the Department determines should be included. In addition, the Department shall provide a full explanation of the following to assist the family in finding a suitable rental unit and to apprise the family and the housing provider of their respective responsibilities:

- (1) Family and housing provider responsibilities under the lease contract;
- (2) The general locations and characteristics of the neighborhood in which units of suitable quality and price may be found;
- (3) Applicable laws and housing standards;

(4) Significant aspects of applicable federal and District law, including fair housing law;

(5) The applicable fair market rent; and

(6) Information on how the Department computes the amount of the tenant assistance payment.

(e) Upon determination of eligibility the Department shall enter on each certificate the smallest unit-size appropriate for the eligible family consistent with the following criteria:

(1) The number of bedrooms indicated as appropriate shall not require more than 2 persons to occupy the same bedroom.

(2) The number of bedrooms indicated as appropriate shall not require persons of the opposite sex other than the husband and wife, except for children under 12 years of age, to occupy the same bedroom.

(3) All single-person households shall be assigned a 0-bedroom unit if 0-bedroom units are available. Where there are no 0-bedroom units available, single-person households shall be assigned a 1-bedroom unit. An elderly, handicapped, or disabled single person planning to live with an unrelated person essential to his or her care may be assigned a 2-bedroom unit.

(f)(1) The Department shall maintain a system to assure that it will be able to honor all outstanding certificates of eligibility with its funding authorization.

(2) Nothing in this subchapter shall be construed as creating an entitlement to assistance payments in the absence of appropriations sufficient to fund this program.

(g)(1) The certificate of eligibility shall expire at the end of 90 days unless within that time the family submits a completed request for lease approval. If the certificate expires, or is about to expire, the family may submit the certificate to the Department with a request for an extension. The Department may grant 1 or more 60-day extensions to any family that continuously demonstrates good faith efforts to locate a suitable rental unit. Expiration of the certificate shall not preclude the family from filing a new application for another certificate.

(2) If an assisted family notifies the Department that it wishes to obtain another certificate of eligibility for the purpose of moving to another rental unit within the District, the Department shall issue another certificate or process a request for lease approval, unless the Department determines that the housing provider is entitled to payment under § 45-2534(d) on account of nonpayment of rent or other amount owed under the lease, and that the family has failed to satisfy any liability.

(h) Owners of rental accommodations in the District shall notify tenants of the existence of the Tenant Assistance Program and shall refer interested parties to the Department for further information. (July 17, 1985, D.C. Law 6-10, § 303, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(f)-(i), 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 2(f)-(i), 34 DCR 6851.)

**Section references.** — This section is referred to in §§ 45-2534 and 45-2584.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Short title.** — See note to § 45-2501.

**A tenant assistance contract must be executed before public funds are expended.** Chamberlain v. Barry, App. D.C., 606 A.2d 156 (1992).

If housing providers could obligate the government for rent subsidies by placing a tenant in possession without an executed tenant assistance contract, it would thwart the government's ability to assure the availability of funds to meet program requirements. Chamberlain v. Barry, App. D.C., 606 A.2d 156 (1992).

## § 45-2534. Tenant assistance payments.

(a) *Basic formula.* — (1) The amount of the tenant assistance payment shall be the amount by which the actual rent or fair market rent applicable to the family, whichever is lower, exceeds 30% of the family's monthly income. Where the head of household is an elderly or handicapped tenant, the amount of the tenant assistance payment shall be the amount by which the actual rent or fair market rent, whichever is lower, exceeds 25% of the family's monthly income. Monthly income is  $\frac{1}{12}$  of annual adjusted income. Annual income is the anticipated total income from all sources received by the family head and spouse, even if temporarily absent, and by each additional member of the family, including all net income derived from assets, for the 12-month period following the effective date of the Department's initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring, or sporadic such as irregular gifts, scholarships, inheritances, insurance payments, and capital gains. Annual income is also exclusive of income from employment of children, including foster children, under the age of 18 years; payments received for the care of foster children; the value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. §§ 2011-2030); and payments or allowances made under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), and the District of Columbia Low Income Energy Assistance Program.

(2) Annual income includes, but is not limited to:

(A) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(B) The net income from operation of a business or profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(C) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from real or personal property). Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of the assets based on the current passbook savings rate as determined by the Department;

(D) The full amount of periodic payments received from Social Security annuities, insurance policies, retirement funds, pensions, disability or death

benefits or other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(E) Welfare assistance;

(F) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay;

(G) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the rental unit;

(H) All regular pay, special pay, and allowances of a member of the armed forces, whether or not living in the rental unit, who is head of the family, spouse, or other person whose dependents are residing in the unit; and

(I) Any earned income tax credit to the extent it exceeds income tax liability.

(b) *Applicable fair market rent.* — The Department shall compute the tenant assistance payment for a family entering the Tenant Assistance Program on the most recent published fair market rents on the date of lease approval for the family.

(b-1) *Payment cap.* — (1) Except in the case of elderly or handicapped tenants, no tenant assistance payment shall exceed 60% of the amount of rent for the recipient's rental unit. In the case of persons receiving tenant assistance payments on and before March 17, 1993, and continuously thereafter, this subsection shall apply 2 years from October 21, 1993.

(2) In the case of persons who are granted Tenant Assistance Program certification after March 17, 1993, if those persons have previously received Tenant Assistance Program subsidies, the subsidies provided those persons shall not exceed 60% of the amount of rent for the recipient's rental unit.

(c) *Rent not capped by payment standard.* — Under the tenant assistance payment computation described in subsections (a) and (b) of this section, the amount of tenant assistance payment does not increase if the unit rents for more than the applicable fair market rent, but a tenant is not prohibited from renting such a unit.

(d) *No reimbursement of amounts family owes housing provider.* — The Department shall not reimburse the housing provider for the portion of the rent not covered by the tenant assistance payment, damages, or other amounts due under the lease.

(e) *No payments for vacancies.* — If a family moves out, the housing provider shall promptly notify the Department and the Department shall make no additional tenant assistance payments to the housing provider for any month after that in which the family moves. The housing provider may retain the tenant assistance payment for the month in which the family moves.

(f) Repealed.

(g) *Finders-keepers policy.* — (1) A family with a certificate of eligibility is responsible for finding a rental unit suitable to the family's needs and desires. A family may select the rental unit which it already occupies if the unit qualifies. Upon request, the Department shall assist families in finding units where, because of age, handicap, large family size, or other reasons, the family is unable to locate an approvable unit. The Department shall also provide this

assistance where the family alleges that illegal discrimination on grounds of race, religion, sex, national origin, age, or handicap is preventing it from finding a suitable unit.

(2) Neither in assisting a family in finding a unit nor by any other action shall the Department directly or indirectly reduce the family's opportunity to choose among the available units in the housing market, except in accordance with § 45-2532 (d). (July 17, 1985, D.C. Law 6-10, § 304, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 3(j), 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 2(j), 34 DCR 6851; Mar. 17, 1993, D.C. Law 9-237, § 2(d), 40 DCR 617; Oct. 21, 1993, D.C. Law 10-45, § 2, 40 DCR 6049; Feb. 5, 1994, D.C. Law 10-68, § 39(a), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 38, 41 DCR 5193.)

**Section references.** — This section is referred to in § 45-2533.

**Effect of amendments.** — D.C. Law 10-68 substituted “7 U.S.C. §§ 2011-2030” for “7 U.S.C. §§ 2011-2019” in the last sentence of (a)(1).

D.C. Law 10-255 validated previously made paragraph designation changes in (b-1).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Legislative history of Law 9-237.** — See note to § 45-2531.

**Legislative history of Law 10-45.** — D.C. Law 10-45, the “Tenant Assistance Program Payment Limitation Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-213, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-80 and transmitted

to both Houses of Congress for its review. D.C. Law 10-45 became effective on October 21, 1993.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

## § 45-2535. Approval and maintenance of rental units; obligations of families.

(a) Rental units which the Department determines are decent, safe, and sanitary as required by the housing regulations, any other statute or regulation governing the condition of residential premises, and the requirements of this title are eligible for tenant assistance.

(b) The following units are not eligible for tenant assistance as provided by this subchapter:

(1) Housing units receiving rent assistance under any federal housing program, or public housing that is managed by the District government;

(2) Nursing homes, units within the grounds of penal, reformatory, medical and similar public or private institutions, and facilities providing continual psychiatric, medical, or nursing service; or

(3) Units occupied by the housing provider.

(c) As required by the Department, units shall be inspected to determine whether they are decent, safe, and sanitary as set forth in § 45-2531(3). Regardless of the number of bedrooms stated on the certificate of eligibility, the Department shall not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family. If the Department determines that the assisted unit occupied by a participating family does not meet the space requirement because of an increase in family size or a change in family composition, the Department shall issue the participating family a new certificate of eligibility. If an acceptable unit is found that is available for occupancy by the family, the Department shall terminate the tenant assistance contract for the original unit in accordance with its terms.

(d) The following maintenance, operation, and inspection requirements shall apply:

(1) The housing provider shall provide all the services, maintenance, and utilities which the housing provider agrees to provide under the contract, subject to abatement of housing assistance payments or other applicable remedies if the housing provider fails to meet these obligations.

(2) A housing provider may collect a security deposit from a family not to exceed 1 month's rent. If the family determines it is unable to pay the security deposit, it may apply to the Department for a repayable advance to cover the difference between the amount the family can afford, as determined by the Department, and the security deposit requested by the housing provider. When the Department decides to provide an advance to the family, the family shall enter into an agreement with the Department for repayment on terms prescribed by the Department. The Department shall establish a reasonable schedule for the repayment to minimize the hardship for the family.

(3) Subject to District law, after the family moves from the unit the housing provider may use the security deposit as reimbursement for any unpaid rent payable by the family or other amounts which the family owes under the lease. The housing provider shall give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the housing provider, the housing provider shall refund promptly to the family the full amount of the unused balance.

(4) The Department shall conduct reexaminations of family income and composition at least annually. The Department shall adjust the amount of each family's tenant assistance payment at the time of the annual reexamination to reflect any changes in family monthly income using the applicable payment or adjustment standard.

(e)(1) A family shall:

(A) Supply any certification, release, information, or documentation the Department determines to be necessary in the administration of the program;

(B) Allow the Department to inspect the rental unit at reasonable times and after reasonable notice;

(C) Notify the Department before vacating the rental unit; and

(D) Use the rental unit solely for residence by the family, and as the family's principal place of residence, and shall not sublease or assign the lease or transfer the unit.

(2) A family shall not:

- (A) Own or have any interest in the dwelling unit;
- (B) Commit any fraud in connection with the Tenant Assistance Program; and
- (C) Receive duplicative assistance under the Tenant Assistance Program and any other federal or District housing assistance program. (July 17, 1985, D.C. Law 6-10, § 305, 32 DCR 3089; May 13, 1987, D.C. Law 7-1, § 2, 34 DCR 2151; Oct. 2, 1987, D.C. Law 7-30, § 3(k), 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 2(k), 34 DCR 6851; Feb. 5, 1994, D.C. Law 10-68, § 39(b), 40 DCR 6311.)

**Effect of amendments.** — D.C. Law 10-68 substituted “§ 45-2531(3)” for “§ 45-2531(2)” at the end of the first sentence in (c).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-1.** — Law 7-1, the “Rental Housing Act of 1985 Temporary Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-120. The Bill was adopted on first and second readings on

February 17, 1987, and March 3, 1987, respectively. Signed by the Mayor on March 19, 1987, it was assigned Act No. 7-5 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Legislative history of Law 10-68.** — See note to § 45-2534.

## **§ 45-2536. Continued eligibility.**

Sixty days prior to the expiration of any tenant assistance authorized under this subchapter, the Department shall notify the tenant, in writing, that the tenant assistance is about to expire and that the tenant, if eligible and desiring to continue to receive tenant assistance, must reapply within 30 days upon receipt of the notice. The tenant shall reapply by executing under oath or affirmation a statement of continued eligibility on a form approved by the Department and by submitting the form to the Department. Unless the Department determines that the person is not eligible, tenant assistance shall continue for the succeeding 12 months. (July 17, 1985, D.C. Law 6-10, § 306, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

## **§ 45-2537. Termination of eligibility.**

(a) If, at any time, a tenant receiving tenant assistance fails to satisfy the requirements of this title relating to conditions of eligibility, the tenant shall immediately notify the Department, in writing, of the ineligibility. Tenant assistance shall terminate on the next day thereafter upon which the rent is due.

(b) If, at any time, the Department determines that a tenant receiving tenant assistance is not, or has ceased to be, eligible for tenant assistance, the Department shall notify the tenant and housing provider in writing, setting forth the reasons for the determination. Tenant assistance payments shall terminate on the next day the rent is due occurring at least 30 days after the date the notice is given, unless, within 15 days after the receipt of the notice,

the tenant submits to the Department a written statement, under oath or affirmation, including any available supporting documents, asserting the tenant's reasons for alleging continued eligibility. Within 30 days following the receipt of the statement and documents, the Department shall make the final determination of the tenant's eligibility for continued receipt of tenant assistance. (July 17, 1985, D.C. Law 6-10, § 307, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Cited in** Branch v. District of Columbia Dep't

of Public & Assisted Hous., App. D.C., 661 A.2d 1102 (1995).

## § 45-2538. Tax exemption.

All monies received by any tenant through the Tenant Assistance Program under this subchapter are exempt from District income taxes payable under Chapter 18 of Title 47. (July 17, 1985, D.C. Law 6-10, § 308, 32 DCR 3089.)

**Cross references.** — As to gross income and adjusted gross income, see § 47-1803.2.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Cited in** Chamberlain v. Barry, App. D.C., 606 A.2d 156 (1992).

## *Subchapter IV. Revenue.*

### § 45-2541. Rental unit fee.

Each housing provider required to register under this chapter, including those otherwise exempt from rental control and registration pursuant to § 45-2515(a)(3), shall pay a fee of \$15 for each rental unit in a housing accommodation registered by the housing provider. The fee shall be paid annually to the District government at the time the housing provider applies for a business license or a renewal of the license; or in the case of a housing accommodation for which no license is required, at the time and in the manner the Commission may determine. Fees shall be deposited in a timely manner in depositories designated by the District government for those purposes. (July 17, 1985, D.C. Law 6-10, § 401, 32 DCR 3089; Aug. 6, 1993, D.C. Law 10-11, § 401; Sept. 30, 1993, D.C. Law 10-25, § 401, 40 DCR 5489.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 10-11.** — D.C. Law 10-11, the "Omnibus Budget Support Temporary Act of 1993," was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

**Legislative history of Law 10-25.** — D.C. Law 10-25, the "Omnibus Budget Support Act of 1993," was introduced in Council and assigned Bill No. 10-165, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Re-

view Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**Application of Law 10-25.** — Section

601(b) of D.C. Law 10-25 provided that Section 401 shall apply as of October 1, 1993.

*Subchapter V. Evictions; Retaliatory Action.*

**§ 45-2551. Evictions.**

(a) Except as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant's lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit. No tenant shall be evicted from a rental unit for any reason other than for nonpayment of rent unless the tenant has been served with a written notice to vacate which meets the requirements of this section. Notices to vacate for all reasons other than for nonpayment of rent shall be served upon both the tenant and the Rent Administrator. All notices to vacate shall contain a statement detailing the reasons for the eviction, and if the housing accommodation is required to be registered by this chapter, a statement that the housing accommodation is registered with the Rent Administrator.

(b) A housing provider may recover possession of a rental unit where the tenant is violating an obligation of tenancy and fails to correct the violation within 30 days after receiving from the housing provider a notice to correct the violation or vacate.

(c) A housing provider may recover possession of a rental unit where a court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation. The housing provider shall serve on the tenant a 30-day notice to vacate.

(d) A natural person with a freehold interest in the rental unit may recover possession of a rental unit where the person seeks in good faith to recover possession of the rental unit for the person's immediate and personal use and occupancy as a dwelling. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of action to recover possession of the rental unit in instances arising under this subsection. No housing provider shall demand or receive rent for any rental unit which the housing provider has repossessed under this subsection during the 12-month period beginning on the date the housing provider recovered possession of the rental unit. A stockholder of a cooperative housing association with a right of possession in a rental unit may exercise the rights of a natural person with a freehold interest under this subsection.

(e) A housing provider may recover possession of a rental unit where the housing provider has in good faith contracted in writing to sell the rental unit or the housing accommodation in which the unit is located for the immediate and personal use and occupancy by another person, so long as the housing provider has notified the tenant in writing of the tenant's right and opportunity to purchase as provided in Chapter 16 of this title. The housing provider shall serve on the tenant a 90-day notice to vacate in advance of the housing provider's action to recover possession of the rental unit. No person shall

demand or receive rent for any rental unit which has been repossessed under this subsection during the 12-month period beginning on the date on which the rental unit was originally repossessed by the housing provider.

(f)(1) A housing provider may recover possession of a rental unit for the immediate purpose of making alterations or renovations to the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied, so long as the plans for the alterations or renovations have been previously filed with and approved by the Rent Administrator and the plans demonstrate that the proposed alterations or renovations cannot safely or reasonably be accomplished while the unit is occupied. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Immediately upon completion of the proposed alterations or renovations, the tenant shall have the absolute right to rerent the rental unit.

(3) Where the renovations or alterations are necessary to bring the rental unit into substantial compliance with the housing regulations, the tenant may rerent at the same rent and under the same obligations that were in effect at the time the tenant was dispossessed, if the renovations or alterations were not made necessary by the negligent or malicious conduct of the tenant.

(4) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(g)(1) A housing provider may recover possession of a rental unit for the purpose of immediately demolishing the housing accommodation in which the rental unit is located and replacing it with new construction, if a copy of the demolition permit has been filed with the Rent Administrator, and, if the requirements of subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 180-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(h)(1) A housing provider may recover possession of a rental unit for the purpose of immediate, substantial rehabilitation of the housing accommodation if the requirements of § 45-2524 and subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 120-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under subchapter VII of this chapter.

(2) Any tenant displaced from a rental unit by the substantial rehabilitation of the housing accommodation in which the rental unit is located shall have a right to rerent the rental unit immediately upon the completion of the substantial rehabilitation.

(3) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(i)(1) A housing provider may recover possession of a rental unit for the immediate purpose of discontinuing the housing use and occupancy of the rental unit so long as:

(A) The housing provider serves on the tenant a 180-day notice to vacate in advance of his or her action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter;

(B) The housing provider shall not cause the housing accommodation, of which the unit is a part, to be substantially rehabilitated for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(C) The housing provider shall not resume any housing or commercial use of the unit for a continuous 12-month period beginning from the date that the use is discontinued under this section;

(D) The housing provider shall not resume any housing use of the unit other than rental housing;

(E) Upon resumption of the housing use, the housing provider shall not rerent the unit at a greater rent than would have been permitted under this chapter had the housing use not been discontinued;

(F) The housing provider shall, on a form devised by the Rent Administrator, file with the Rent Administrator a statement including, but not limited to, general information about the housing accommodation, such as address and number of units, the reason for the discontinuance of use, and future plans for the property;

(G) If the housing provider desires to resume a rental housing use of the unit, the housing provider shall notify the Rent Administrator who shall determine whether the provisions of this paragraph have been satisfied; and

(H) The housing provider shall not demand or receive rent for any rental unit which the housing provider has repossessed under this subsection for a 12-month period beginning on the date the housing provider recovered possession of the rental unit.

(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter.

(j) In any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the rental unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 45-1615(c).

(k) Notwithstanding any other provision of this section, no housing provider shall evict a tenant on any day when the National Weather Service predicts at 8:00 a.m. that the temperature at the National Airport weather station will fall below 32 degrees fahrenheit or 0 degrees centigrade within the next 24 hours.

(k-1) Subsection (k) shall not apply:

(1) Where, in accordance with and as provided in subsection (c) of this section, a court of competent jurisdiction has determined that the tenant has performed an illegal act within the rental unit or housing accommodation; or

(2) Where a court of competent jurisdiction has made a specific finding that the tenant's actions or presence causes undue hardship on the health, welfare, and safety of other tenants or immediate neighbors.

(1) This section shall not apply to privately-owned rental housing or housing owned by the federal or District government with regard to drug-related evictions under subchapter V-A of this chapter. (July 17, 1985, D.C. Law 6-10, § 501, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(g), 33 DCR 7836; June 13, 1990, D.C. Law 8-139, § 11, 37 DCR 2645; May 14, 1993, D.C. Law 10-2, § 2(a), 40 DCR 2250; March 23, 1994, D.C. Law 10-97, § 2(a), 41 DCR 521; Aug. 26, 1994, D.C. Law 10-164, § 2, 41 DCR 4889.)

**Section references.** — This section is referred to in §§ 45-2559.2, 45-2571, 45-2572, and 45-2592.

**Effect of amendments.** — D.C. Law 10-164 substituted "fall below 32 degrees fahrenheit or 0 degees centigrade" for "not exceed 25 degrees fahrenheit" in (k); and added (k-1).

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Rental Housing Act of 1985 Winter of 1994 Emergency Amendment Act of 1994 (D.C. Act 10-179, January 25, 1994, 41 DCR 520).

For temporary repeal of the Rental Housing Act of 1985 Freezing Temperature Emergency Amendment Act of 1993, effective December 16, 1993 (D.C. Act 10-161; 40 DCR 8874), see § 3 of the Rental Housing Act of 1985 Winter of 1994 Emergency Amendment Act of 1994 (D.C. Act 10-179, January 25, 1994, 41 DCR 520).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-192.** — See note to § 45-2515.

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Legislative history of Law 10-2.** — D.C. Law 10-2, the "Rental Housing Act of 1985 Frigid Temperature Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-147. The Bill was adopted on first and second readings on February 16, 1993, and March 2, 1993, respectively. Signed by the Mayor on March 19, 1993, it was assigned Act No. 10-14 and transmitted to both Houses of Congress for its review. D.C. Law 10-2 became effective on May 14, 1993.

**Legislative history of Law 10-97.** — D.C. Law 10-97, the "Rental Housing Act of 1985 Freezing Temperature Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-498. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 25, 1994, it was

assigned Act No. 10-180 and transmitted to both Houses of Congress for its review. D.C. Law 10-97 became effective on March 23, 1994.

**Legislative history of Law 10-164.** — Law 10-164, the "Rental Housing Act of 1985 Freezing Temperature Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-492, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-277 and transmitted to both Houses of Congress for its review. D.C. Law 10-164 became effective on August 26, 1994.

**Expiration of Law 8-139.** — Section 12(b) of D.C. Law 8-139 provided that the act shall expire 10 years after the effective date of the act. D.C. Law 8-139 became effective on June 13, 1990.

**Federal preemption.** — District of Columbia housing law is not preempted by the federal right of rejection in 11 U.S.C. § 365. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

Inasmuch as the obligations imposed by District of Columbia for the benefit of public health and safety are independent of private leases, rejection of leases under 11 U.S.C. § 365(h) has no bearing on the debtor-landlord's obligations under applicable local law. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

**Preemption by HUD regulations.** — HUD regulations requiring a lease did not preempt the 1st sentence of subsection (a) of this section so as to justify eviction for failure to sign a lease. Rowe v. Pierce, 622 F. Supp. 1030 (D.D.C. 1985).

**Eviction restrictions liberally construed.** — The eviction restrictions of this section are only part of a comprehensive legislative scheme to protect the rights of tenants

and therefore must be construed liberally. Administrator of Veterans Affairs v. Valentine, App. D.C., 490 A.2d 1165 (1985).

**And they protect tenant of defaulting mortgagor.** — The eviction restrictions codified in this section protect the tenant of a defaulting mortgagor who remains in her previously rented apartment after a foreclosure sale. Administrator of Veterans Affairs v. Valentine, App. D.C., 490 A.2d 1165 (1985).

A tenant of a defaulting deed of trust debtor becomes a tenant of the purchaser at the trustee's sale within the meaning of this chapter. Washington Fed. Sav. & Loan Ass'n v. District of Columbia Rental Hous. Comm'n, App. D.C., 492 A.2d 279 (1985).

A tenant holding over after foreclosure is entitled to the eviction protections of this section. Merriweather v. District of Columbia Bldg. Corp., App. D.C., 494 A.2d 1276 (1985).

**Tenant.** — Person was a "tenant" even though he was displaced by a fire. Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).

Maintenance men occupying employer-landowner's premises as an incident to services they provided were not tenants because they did not occupy a rental unit, and were therefore not entitled to 30 days' notice to quit. Anderson v. William J. Davis, Inc., App. D.C., 553 A.2d 648 (1989).

**Obligation other than payment of "rent" must be specifically provided in lease.** — If a landlord wishes to make certain payments part of a tenant's rental obligation, the lease must unequivocally so provide. Ruppert Real Estate, Inc. v. McCarter, 111 WLR 1953 (Super. Ct. 1983).

**Cure period for obligation to pay rent.** — The cure period for an obligation to pay rent on time will expire, not 30 days after the notice is received, but rather on the first day of the rental period immediately following the lapse of the 30 day notice period which commences on receipt of the notice; consequently, if the notice to correct or vacate is not received by the tenant exactly 30 days before the first day of the next rental period, the cure period will be longer than 30 days. Pritch v. Henry, App. D.C., 543 A.2d 808 (1988).

**Notice provisions in § 45-1401 are superseded by notice provisions in this section** in requiring written notice to quit in cases where a lease for a definite term has come to an end. Burns v. Harvey, 114 WLR 133 (Super. Ct. 1986).

**Tenant entitled to single notice to cure or vacate prior to landlord's suit for possession.** — A single notice to cure or vacate is all that a tenant is entitled to receive before a suit to recover possession may be brought by his or her landlord for a violation of the ten-

ancy. Cooley v. Suitland Parkway Overlook Tenants' Ass'n, App. D.C., 460 A.2d 574 (1983).

**Notice of landlord's recovery for his own occupancy.** — Where landlord seeks to recover possession of apartment for his own occupancy as a dwelling, he must give tenant a 90-day notice to vacate under subsection (d), not a 30-day notice under subsection (b). Ryles v. Renfrow, 113 WLR 629 (Super. Ct. 1985).

**Second notice requirement.** — Pursuant to 14 D.C.M.R. 6404, 24 C.F.R. § 966.4(1) (1990), and this section, the District is not required to provide two separate, consecutive notices unless the tenant has exercised her right to administrative review of the proposed termination of the lease. District of Columbia v. Willis, App. D.C., 612 A.2d 1275 (1992).

Invocation of the administrative review process by the tenant and the tenant's lack of success before the reviewing body triggers the tenant's right to a second notice. Where the tenant did not seek administrative review, the single notice provided was adequate to protect the tenant's rights under both the federal regulations and this section. District of Columbia v. Willis, App. D.C., 612 A.2d 1275 (1992).

The notice to a tenant to cure which combined a notice to cure or quit by a specified date with a notice of the tenant's right to administrative review was legally sufficient. District of Columbia v. Willis, App. D.C., 612 A.2d 1275 (1992).

**Owner's obligation to provide heat to tenant after failed eviction attempt.** — When an owner by foreclosure of residential property in the District of Columbia fails in an attempt to evict a tenant, the owner does have an obligation to heat the tenant's apartment, even though there is no contract between the two. Valentine v. United States, 706 F. Supp. 77 (D.D.C. 1989).

**Effect of chapter on duration of residential tenancies.** — Once a tenant moves into a residential rental unit in the District of Columbia, and regardless of the nature or length of the tenancy set forth in the lease, that tenant may not be evicted from the unit unless: (1) He or she fails to pay rent; or (2) he or she gives a written notice of intention to vacate by a certain date and then fails to do so; or (3) he or she violates some other condition of the tenancy; or (4) the landlord wishes to retake possession for one of the reasons specified in this section. In all cases save (1), the landlord must give a written notice which conforms to the Rental Housing Act of 1985, D.C. Law 6-10 (this chapter). Thus, in effect, the Act creates residential tenancies of indefinite duration. Burns v. Harvey, 114 WLR 133 (Super. Ct. 1986).

**Waiver of right to receive written notice.** — The right of a tenant to waive its right to receive written notice to quit from the landlord, where a lease for a definite term of years has

come to an end, is limited to a nonpayment of rent situation. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Waiver of breach by landlord.** — Where tenant was given statutory notice and opportunity to cure violation of lease, landlord's acquiescence in breach of covenant in lease until time of notice did not constitute a waiver of the breach by the landlord. *Grubb v. Wm. Calomiris Inv. Corp.*, App. D.C., 588 A.2d 1144 (1991).

**Notice to quit inapplicable.** — Section 45-1402 does not apply when a tenant protected by this section allegedly violates a lease obligation. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

The merger of a notice to cure and a notice to quit into one required notice — the "notice to cure or vacate" — under the 1980 and 1985 Rental Housing Acts leaves no room for the § 45-1402 timing requirement when subsection (b) of this section applies to the termination of a month-to-month tenancy. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

A landlord may file an action for possession of leased residential premises alleging violation of an obligation of tenancy, other than nonpayment of rent, if the tenant has not corrected the violation within 30 days after receiving notice to correct the violation or vacate, without regard to the timing requirement in § 45-1402. *Cormier v. McRae*, App. D.C., 609 A.2d 676 (1992).

**Tenant's breach of promise to limit occupancy.** — The breach of a tenant's promise to limit the occupancy of a rental unit can be significant and serve as the basis for eviction. *Grubb v. Wm. Calomiris Inv. Corp.*, App. D.C., 588 A.2d 1144 (1991).

**Refusal to grant relief.** — Judge's refusal to grant equitable relief based on the tenant's belated cure of breach of covenant in lease was not an abuse of discretion. *Grubb v. Wm. Calomiris Inv. Corp.*, App. D.C., 588 A.2d 1144 (1991).

**Failure of tenant to abide by his or her written notice of intention to vacate** is not specifically enumerated in this section as one of the permissible reasons for which a landlord may give that tenant a notice to vacate; however, a written notice by a tenant that he or she will vacate by a date certain becomes, in effect, a condition or obligation of the lease. Failure of the tenant to vacate as promised in the notice

constitutes a violation of an obligation of the tenancy, for which a landlord may give a 30-day notice pursuant to this section. *Burns v. Harvey*, 114 WLR 133 (Super. Ct. 1986).

**Acceptance of rent after notice to quit.** — The receipt of rent by a landlord, after notice to quit, for a new term or part thereof, amounts to a waiver of the right to demand possession under that notice, unless it is clear from all the circumstances that, by accepting rent from a holdover tenant, the landlord did not intend to waive an express intention to enforce the lease. *Habib v. Thurston*, App. D.C., 517 A.2d 1 (1985).

**Evidence sufficient to support sanctions on tenant.** — The *prima facie* showing which landlord made of exemption from this section by tendering the lease demonstrating the commercial nature of the tenancy was sufficient to permit imposition of sanctions upon tenant for failure to make payments. *King v. Jones*, App. D.C., 647 A.2d 64 (1994).

**Dispossession of paying tenants.** — Even a paying tenant can be dispossessed in certain limited circumstances, e.g., if the landlord moves in, sells the property to someone else who will move in, or undertakes renovations which cannot be completed if the property is occupied, or if the tenant violates an obligation of the tenancy or commits an illegal act on the premises. *Moore v. Jones*, App. D.C., 542 A.2d 1253 (1988).

**Former § 45-1561 cited** in *Temple v. Thomas D. Walsh, Inc.*, App. D.C., 485 A.2d 192 (1984); *Wahl v. Watkis*, App. D.C., 491 A.2d 477 (1985).

**Cited** in *Burns v. Harvey*, App. D.C., 524 A.2d 35 (1987); *Ungar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 535 A.2d 887 (1987); *Revithes v. District of Columbia Rental Hous. Comm'n*, App. D.C., 536 A.2d 1007 (1987); *Kline v. Kelly*, 116 WLR 101 (Super. Ct. 1988); *Kariuki v. Brown*, 116 WLR 601 (Super. Ct. 1988); *Hornstein v. Barry*, App. D.C., 560 A.2d 530 (1989); *Stroud v. Steininger*, App. D.C., 563 A.2d 1091 (1989); *McGinty v. Dickson*, 117 WLR 1109 (Super. Ct. 1989); *Lennon v. United States Theatre Corp.*, 920 F.2d 996 (D.C. Cir. 1990); *DeSzunyogh v. William C. Smith & Co.*, App. D.C., 604 A.2d 1 (1992); *Balkissoon v. Williams*, 120 WLR 173 (Super. Ct. 1992); "N" St. Follies Ltd. Partnership v. *District of Columbia Rental Hous. Comm'n*, App. D.C., 622 A.2d 61 (1993).

## § 45-2552. Retaliatory action.

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which

would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;

(3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;

(4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or

(6) Brought legal action against the housing provider. (July 17, 1985, D.C. Law 6-10, § 502, 32 DCR 3089.)

**Section references.** — This section is referred to in § 45-2515.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Federal preemption.** — District of Columbia housing law is not preempted by the federal right of rejection in 11 U.S.C. § 365. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

Inasmuch as the obligations imposed by District of Columbia for the benefit of public health and safety are independent of private leases, rejection of leases under 11 U.S.C. § 365(h) has no bearing on the debtor-landlord's obligations under applicable local law. Saravia v. 1736 18th St., N.W., Ltd. Partnership, 844 F.2d 823 (D.C. Cir. 1988).

**Jurisdiction.** — The Superior Court has jurisdiction along with the Rental Housing Commission and Rent Administrator to decide

retaliation issues. Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

**A suit for retaliation may be brought as an affirmative action,** and is not reserved exclusively for affirmative defenses. Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

**Retaliatory action provision is applicable** only where a landlord takes an action not otherwise permitted by law. Wahl v. Watkis, App. D.C., 491 A.2d 477 (1985).

A lawsuit initiated by a landlord in retaliation for a tenant's exercise of his rights certainly falls under the scope of this section. Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

**Independent causes of action.** — Tenant had no independent cause of action for damages for landlord's alleged retaliation under this Act. Twyman v. Johnson, App. D.C., 655 A.2d 850 (1995).

**Commercial tenancies.** — There is no im-

plied, common law retaliatory eviction defense that extends to commercial tenancies. *Espenschied v. Mallick*, App. D.C., 633 A.2d 388 (1993).

The retaliatory eviction defense did not extend to commercial tenants in mixed-use building. *Espenschied v. Mallick*, App. D.C., 633 A.2d 388 (1993).

**Statutory presumption.** — If a tenant alleges acts which fall under this section, the landlord is presumed to have taken an action not otherwise permitted by law unless the landlord can meet its burden under this section. *DeSzunyogh v. William C. Smith & Co.*, App. D.C., 604 A.2d 1 (1992).

The content and timing of tenant's letters to her landlord were sufficient to raise the presumption of retaliatory action. *DeSzunyogh v.*

*William C. Smith & Co.*, App. D.C., 604 A.2d 1 (1992).

**Burden of proof.** — Once the statutory presumption is triggered, the landlord must meet its burden with clear and convincing evidence to show that its actions were not retaliatory in nature. *DeSzunyogh v. William C. Smith & Co.*, App. D.C., 604 A.2d 1 (1992).

**Cited** in *Habib v. Thurston*, App. D.C., 517 A.2d 1 (1985); *Queen v. Postell*, App. D.C., 513 A.2d 812 (1986); *Ontell v. Capitol Hill E.W. Ltd. Partnership*, App. D.C., 527 A.2d 1292 (1987); *Grubb v. Wm. Calomiris Inv. Corp.*, App. D.C., 588 A.2d 1144 (1991); *Hawkins v. Greenfield*, 797 F. Supp. 30 (D.D.C. 1992); *Camacho v. 1440 Rhode Island Ave. Corp.*, App. D.C., 620 A.2d 242 (1993).

## § 45-2553. Conciliation and arbitration service.

(a) There is established a conciliation and arbitration service ("service") within the Division.

(b) The service shall provide a voluntary, nonadversarial forum for the resolution of disputes arising between housing providers and tenants in the District.

(c) The staff of the service shall be designated by the Rent Administrator and shall be persons familiar with the problems of the law relating to housing-provider and tenant relations and with knowledge of conciliation and arbitration practices.

(d) Either a housing provider or a tenant may initiate a proceeding before the service.

(e) No person shall be compelled to attend a session of the service or participate in any proceeding before its staff. The results of any proceeding shall not be binding upon any party, except (1) to the extent provided in § 45-2554, or (2) with respect to a conciliation agreement, to the extent that a party to the proceeding agrees to be bound by the conciliation agreement. No evidence pertaining to a conciliation or arbitration proceeding shall be admissible in any judicial proceeding under other provisions of law relating to housing-provider and tenant disputes. (July 17, 1985, D.C. Law 6-10, § 503, 32 DCR 3089.)

**Section references.** — This section is referred to in § 45-2554.

**Legislative history of Law 6-10.** — See note to § 45-2501.

## § 45-2554. Arbitration.

(a) By mutual consent, the housing provider and tenant may submit for arbitration any dispute not satisfactorily resolved under § 45-2553.

(b) A request for arbitration shall be in writing.

(c) The Rent Administrator shall designate 3 members of the Division's staff, other than those who heard the dispute under § 45-2553, to serve as a panel of arbitrators.

(d) The arbitration panel shall issue a written recommendation to resolve the dispute within 10 days of the request.

(e) Agreements entered into between the housing provider and tenant under the panel's recommendation shall be approved by the Rent Administrator and shall be binding upon the parties. (July 17, 1985, D.C. Law 6-10, § 504, 32 DCR 3089.)

**Section references.** — This section is referred to in § 45-2553.

**Legislative history of Law 6-10.** — See note to § 45-2501.

## § 45-2555. Prohibition of discrimination against elderly tenants or families with children.

(a) It is unlawful for a housing provider to discriminate against families receiving or eligible to receive Tenant Assistance Program assistance, elderly tenants, or families with children when renting housing accommodations.

(b) Any protections provided by subsection (a) of this section and any penalties provided in § 45-2591 shall be in addition to any other provision of law.

(c) Allegations of violations of this section that are made by families receiving or eligible to receive Tenant Assistance Program assistance, by elderly tenants, or by families with children shall be promptly investigated and handled by the Department of Consumer and Regulatory Affairs, which shall provide the complaining party with a written report upon the conclusion of the investigation. (July 17, 1985, D.C. Law 6-10, § 505, 32 DCR 3089; Oct. 2, 1987, D.C. Law 7-30, § 4, 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 3, 34 DCR 6851.)

**Cross references.** — As to unlawful discriminatory practices in real estate transactions, see § 1-2515.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Cited** in Balkissoon v. Williams, 120 WLR 173 (Super. Ct. 1992).

## *Subchapter V-A. Residential Drug-Related Evictions.*

### § 45-2559.1. Definitions.

For the purposes of this subchapter, the term:

(1) "District" means the District of Columbia.

(2) "Drug haven" means a housing accommodation, or land appurtenant to or common areas of a housing accommodation where drugs are illegally stored, manufactured, used, or distributed during the 180-day period that precedes the time that an action is commenced pursuant to this subchapter.

(3) "Drug-related eviction" means an eviction pursuant to this subchapter.

(4) "Drug" means a controlled substance as defined in § 33-501(4), or the Controlled Substances Act of 1970, approved October 27, 1970 (84 Stat. 1243; 21 U.S.C. § 801 et seq.).

(5) "Housing provider" means:

- (A) A landlord, owner, lessor, sublessor, or assignee;
- (B) The agent of a landlord, owner, lessor, sublessor, or assignee; or
- (C) Any person entitled to receive compensation for the use or occupancy of a rental unit within a housing accommodation.

(6) "Housing accommodation" means a building that is or contains at least 1 rental unit and the land appurtenant to the building.

(7) "Manufacture" shall have the same meaning as that term has in § 33-501(13), or the Controlled Substances Act of 1970 (21 U.S.C. § 801 et seq.).

(8) "Closure" means the closing of a rental unit or housing accommodation.

(9) "Occupant" means any person authorized by the tenant or housing provider to be on the premises of the rental unit.

(10) "Rental unit" means an apartment, room, or part of a publicly or privately owned housing accommodation that is rented or offered for rent for residential occupancy, and the land appurtenant to the apartment, room, or part of the housing accommodation.

(11) "Resident association" means an organization of residents of a multifamily building or a single complex of jointly managed multifamily buildings.

(12) "Tenant" means a lessee, sublessee, or other person entitled to the possession or occupancy of a rental unit. (June 13, 1990, D.C. Law 8-139, § 2, 37 DCR 2645.)

**Legislative history of Law 8-139.** — Law 8-139, the "Residential Drug-Related Evictions Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-194, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the

Mayor on April 17, 1990, it was assigned Act No. 8-195 and transmitted to both Houses of Congress for its review.

**Expiration of Law 8-139.** — Section 12(b) of D.C. Law 8-139 provided that the act shall expire 10 years after the effective date of the act. D.C. Law 8-139 became effective on June 13, 1990.

## § 45-2559.2. Action for possession of rental unit used as a drug haven.

(a) Notwithstanding any provision of § 16-1501 or § 45-2551, a housing provider may commence an action to recover possession of a rental unit or the Mayor may commence an action to evict a tenant or occupant in a rental unit. The recovery or eviction shall be ordered if the Superior Court of the District of Columbia ("Court") has determined by a preponderance of the evidence that the rental unit is a drug haven. In making the determination that the rental unit is a drug haven, the Court shall consider:

(1) Whether a tenant or occupant of the rental unit has been charged with a violation of Chapter 5 of Title 33, or the Controlled Substances Act of 1970 (21 U.S.C. § 801 et seq.), due to activities that occurred within the housing accommodation that contains the rental unit within 180 days of the commencement of the eviction action pursuant to this subchapter and is awaiting trial, or has violated a term of parole or probation for a previous conviction under

Chapter 5 of Title 33, or the Controlled Substances Act of 1970 (21 U.S.C. § 801 et seq.);

(2) Whether the rental unit has been the subject of more than 1 drug-related search or seizure that has resulted in the arrest of a tenant or occupant during the 180-day period that precedes the time that an eviction action is commenced pursuant to this subchapter;

(3) Whether a firearm has been discharged within the rental unit at any time during the 180-day period that precedes the time that an eviction action is commenced pursuant to this subchapter;

(4) The testimony of any witness concerning the possession, manufacture, storage, distribution, use, or the attempted possession, manufacture, storage, distribution, or use of an illegal drug by a tenant or occupant in the housing accommodation that contains the rental unit; or

(5) Any other relevant and admissible evidence that demonstrates that the rental unit is or is not a drug haven.

(b) A notice of the action shall be served upon the tenant or occupant and housing provider at least 5 days prior to a hearing. (June 13, 1990, D.C. Law 8-139, § 3, 37 DCR 2645.)

**Section references.** — This section is referred to in §§ 45-2559.3, 45-2559.4, and 45-2559.6.

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

### **§ 45-2559.3. Preliminary injunction review.**

(a) After commencement of an action pursuant to § 45-2559.2 and upon request of a party, the Court shall hold a hearing to determine if a preliminary injunction should be granted to prevent a tenant from directly or indirectly maintaining a drug haven.

(b) The Court may grant a motion for a preliminary injunction if the plaintiff meets the necessary legal requirements for a preliminary injunction. The factors that the Court shall consider in determining whether the plaintiff is entitled to a preliminary injunction are:

(1) Whether the plaintiff is likely to prevail on the merits of the case;

(2) Whether in the absence of relief, the plaintiff will suffer irreparable harm;

(3) Whether there will be substantial harm to the defendant or another party if relief is granted; and

(4) Whether the public interest favors granting relief.

(c) Neither the housing provider nor the Mayor shall be required to give bond to obtain an injunction. (June 13, 1990, D.C. Law 8-139, § 4, 37 DCR 2645.)

**Section references.** — This section is referred to in § 45-2559.6.

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

**§ 45-2559.4. Full hearing.**

(a) Within 10 days of the issuance of the preliminary injunction, excluding Saturdays, Sundays, and legal holidays, the Court shall hold a full hearing on the merits of the eviction action. In the event a hearing for a preliminary injunction has not been requested, the Court shall expeditiously schedule a full hearing. If it is determined by a preponderance of the evidence, after consideration of the factors set forth in § 45-2559.2, that the rental unit is a drug haven, the Court shall issue a final order that mandates one or more of the following:

- (1) Eviction of the tenant or occupant; or
- (2) Closure of the rental unit for a period of time to be decided by the Court.

(b) Execution of a final order shall occur within 5 days of the issuance of the final order, excluding Saturdays, Sundays, and legal holidays. If the United States Marshal of the District of Columbia has not executed the final order within 5 days of issuance of the final order, the final order shall continue to be executable and valid, in accordance with Rule 16(a) of the Superior Court Rules of Civil Procedure for the Landlord and Tenant Branch.

(c) The Court shall not enter a final order to evict a tenant or occupant against whom the action was filed if the tenant or occupant shows by a preponderance of the evidence that the events or actions upon which the judgment may be granted:

- (1) Could not reasonably have been known to the tenant or occupant;
- (2) Were not part of a pattern and practice of the tenant or occupant of the unit; or
- (3) Were reported to the Metropolitan Police Department by the tenant or occupant. (June 13, 1990, D.C. Law 8-139, § 5, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

**§ 45-2559.5. Default judgment.**

The Court shall not enter a default judgment to evict a tenant or occupant who has failed to plead or otherwise defend unless, based upon evidence presented by the plaintiff, the Court determines that the rental unit is a drug haven. (June 13, 1990, D.C. Law 8-139, § 6, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

**§ 45-2559.6. Complaint by affected tenant or resident association.**

(a) To initiate an action pursuant to § 45-2559.2, an affected tenant, resident, or resident association may submit a petition accompanied by a complaint for review by the Mayor. The housing provider may be named as

party plaintiff in the petition. The review of the petition by the Mayor shall be completed within 7 days of receipt of the petition.

(b) The petition shall set forth the following:

(1) The date and time the affected tenant, resident, or resident association witnessed the possession, manufacture, storage, distribution, use, or attempted possession, manufacture, storage, distribution, or use of an illegal drug in the rental unit by a tenant or occupant;

(2) The name, address, and telephone number of any corroborating witness; and

(3) Any other information relevant to the petition that can be verified by a named witness or independent authority, including the Metropolitan Police Department.

(c) If, upon review, the Mayor determines that a petition and complaint are complete, the affected tenant, resident, or resident association may file the complaint with the Court to commence an action pursuant to § 45-2559.2.

(d) The Court shall proceed to consider the complaint pursuant to §§ 45-2559.2 and 45-2559.3. (June 13, 1990, D.C. Law 8-139, § 7, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

## **§ 45-2559.7. Mayor's authority and responsibility.**

(a) The Mayor shall establish within the Metropolitan Police Department a division to provide assistance to, supervision of, or protection to a plaintiff who has obtained an eviction order or other relief pursuant to this subchapter.

(b) The Mayor shall report to the Council on an annual basis on the effectiveness of this subchapter. (June 13, 1990, D.C. Law 8-139, § 8, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

## **§ 45-2559.8. Rules.**

(a) The Mayor shall issue proposed rules to implement the provisions of this subchapter within 180 days of June 13, 1990. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(b) The Mayor may issue emergency rules without prior Council approval, which shall be effective for not more than 90 days. (June 13, 1990, D.C. Law 8-139, § 9, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

## § 45-2559.9. Availability of other remedies.

The provisions of this subchapter shall not limit the availability of other remedies under the law that are not inconsistent with this subchapter. (June 13, 1990, D.C. Law 8-139, § 10, 37 DCR 2645.)

**Legislative history of Law 8-139.** — See note to § 45-2559.1.

**Expiration of Law 8-139.** — See note to § 45-2559.1.

## *Subchapter VI. Conversion or Demolition of Rental Housing for Hotels, Motels, or Inns.*

### § 45-2561. Conversion.

Notwithstanding any other provision of law, no person shall convert and the Mayor shall not permit the conversion of any housing accommodation or rental unit into a hotel, motel, inn, or other transient residential occupancy unit or accommodation. (July 17, 1985, D.C. Law 6-10, § 601, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

### § 45-2562. Demolition.

(a) Notwithstanding any other provision of law, no person shall demolish and the Mayor shall not permit the demolition of any housing accommodation or rental unit for the purpose of constructing or expanding a hotel, motel, inn, or other transient residential accommodation.

(b) No person shall construct or expand and the Mayor shall not permit the construction or expansion of a hotel, motel, inn, or other transient residential occupancy on the site of a housing accommodation or rental unit demolished after July 17, 1985. (July 17, 1985, D.C. Law 6-10, § 602, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2561.

**Short title.** — See note to § 45-2501.

## *Subchapter VII. Relocation Assistance for Tenants Displaced by Substantial Rehabilitation, Demolition, or Housing Discontinuance.*

### § 45-2571. Notice of right to assistance.

No housing provider shall substantially rehabilitate, demolish, or discontinue any housing accommodation unless there has first been served upon each tenant residing in the housing accommodation a written notice of intent to

rehabilitate, demolish, or discontinue the housing accommodation in accordance with § 45-2551(g), (h), or (i), as appropriate. The notice shall advise the tenants of their right to relocation assistance under this chapter or any other District law, and the procedures for applying for the assistance. The Rental Housing Commission shall prescribe the content of the notice. No tenant may be evicted from a housing accommodation which the housing provider intends to substantially rehabilitate, demolish, or discontinue housing use, or which the housing provider intends to sell to another person who, to the housing provider's knowledge, intends to substantially rehabilitate, demolish, or discontinue housing use, unless the requirements of this section have been met. Nothing contained in this section shall be construed to limit a housing provider's right to evict a tenant for nonpayment of rent or violation of an obligation of the tenancy, if the action to evict is in compliance with § 45-2551. (July 17, 1985, D.C. Law 6-10, § 701, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

## **§ 45-2572. Eligibility assistance.**

Each housing provider commencing substantial rehabilitation, demolition, or housing discontinuance, on or after July 17, 1985, shall pay relocation assistance in an amount calculated under § 45-2573 to all tenants of the housing accommodation who:

(1) Were living in the rental units contained in the housing accommodation from which they are being displaced at the time the notice required by § 45-2551 is given; and

(2) Are displaced from rental units because the housing accommodation in which they are located is to be substantially rehabilitated, demolished, or discontinued. (July 17, 1985, D.C. Law 6-10, § 702, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2571.

## **§ 45-2573. Payments.**

(a) The amount of relocation assistance payable to a displaced tenant shall be calculated as follows:

(1) Except as provided in paragraph (2) of this subsection, relocation assistance in the amount of \$150 for each room in the rental unit shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings. For the purposes of this paragraph, the term "room" in a rental unit means any space 60 square feet or larger which has a fixed ceiling and a floor and is subdivided with fixed partitions on all sides, but does not mean bathrooms, balconies, closets, pantries, kitchens, foyers, hallways, storage areas, utility rooms, or the like.

(2) Relocation assistance in the amount of \$75 for each pantry, kitchen, storage area, and utility room that exceeds 60 square feet in area shall be payable to the tenants or subtenants bearing the cost of removing the majority of the furnishings.

(b) The Mayor shall adjust the amount to be paid tenants for relocation assistance from time to time in order to reflect changes in the cost of moving within the Washington, D.C., Standard Metropolitan Statistical Area (SMSA). The adjustments shall be made under subchapter I of Chapter 15 of Title 1, not more than once in any calendar year.

(c) Relocation assistance shall be paid to eligible tenants not later than 24 hours before the date the rental unit is to be vacated by the tenants or subtenants, if the housing provider has received at least 10 days, excluding Saturdays, Sundays, and holidays, advance written notice of the date upon which the unit is to be vacated. Where the tenant does not provide the housing provider with at least a 10-day notice, the relocation assistance shall be paid within 30 days after the unit is vacated.

(d) Payment of relocation assistance shall not be required with respect to any rental unit which is the subject of an outstanding judgment for possession obtained by the housing provider or housing provider's predecessor in interest against the tenants or subtenants for a cause of action whether the cause of action arises before or after the service of the notice of intention to rehabilitate, demolish, or discontinue housing use. If the judgment for possession is based upon nonpayment of rent and arises after the notice of intent to rehabilitate, demolish, or discontinue housing use has been given, then relocation assistance shall be required in an amount reduced by the amount determined to be due and owing to the housing provider by the court rendering the judgment for possession. (July 17, 1985, D.C. Law 6-10, § 703, 32 DCR 3089.)

**Section references.** — This section is referred to in § 45-2572.

**Termination of Law 6-10.** — See note to § 45-2571.

**Legislative history of Law 6-10.** — See note to § 45-2501.

## § 45-2574. Relocation advisory services.

Whenever a building in the District is converted from rental to condominium units, substantially rehabilitated or demolished, or discontinued from housing use, the Relocation Assistance Office of the Department of Housing and Community Development shall provide relocation advisory services for tenants who move from the building. These services shall include:

- (1) Ascertaining the relocation needs for each household;
- (2) Providing current information on the availability of equivalent substitute housing;
- (3) Supplying information concerning federal and District housing programs; and
- (4) Providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation. (July 17, 1985, D.C. Law 6-10, § 704, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501. **Termination of Law 6-10.** — See note to § 45-2571.

### **§ 45-2575. Tenant hot line.**

The Department of Consumer and Regulatory Affairs shall provide for the continuation of a tenant hot line. The primary purpose of the tenant hot line is to provide assistance to low- and moderate-income tenants. To carry out this purpose, the functions and responsibilities shall include, but not be limited to, the following:

- (1) Answering rent control procedural questions, and directing tenants toward possible courses of action in resolving problems;
- (2) Providing advice on housing regulation violations;
- (3) Explaining rent increases;
- (4) Providing guidance on emergency shelter;
- (5) Providing guidance on the Tenant Assistance Program;
- (6) Providing guidance in resolving problems involving water, heating, repairs, and other matters;
- (7) Providing advice on possible action in response to allegations of discrimination, harassment, or neglect by housing providers;
- (8) Answering preliminary questions about remedies through the courts;
- (9) Providing guidance when tenants are faced with eviction; and
- (10) Providing guidance on other tenant problems. (July 17, 1985, D.C. Law 6-10, § 705, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501. **Termination of Law 6-10.** — See note to § 45-2571.

## *Subchapter VIII. New and Vacant Rental Housing and Distressed Property.*

### **§ 45-2581. Declaration of policy.**

In order to assist in stimulating the expansion of the supply of decent, safe, and affordable rental housing for low- to moderate-income persons in the District, the Council declares as its policy that the Mayor and the Council shall:

- (1) Use the District's bonding authority to provide low-interest financing for the construction of new rental units and the rehabilitation of vacant rental units; and
- (2) Provide tax abatements and other incentives for the construction of new rental units and the rehabilitation of vacant rental units. (July 17, 1985, D.C. Law 6-10, § 801, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, pro-

vided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Re-

view Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**Mayor authorized to issue rules.** — Section 2(d) of D.C. Law 10-155 provided in part that pursuant to subchapter 1 of Chapter 15 of Title 1, the Mayor shall issue rules to implement this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal

holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter 1 of Chapter 15 of Title 1.

## § 45-2582. Tax abatement for new or rehabilitated vacant rental housing.

(a) There shall be an 80% reduction of the property tax liability during the first year newly constructed rental housing accommodations become available for rental. Tax for succeeding years shall be increased by increments of 16% of the full tax liability, until the time the full liability absent this provision, is reached.

(b) When vacant rental accommodations which have been rehabilitated become available for rental, the provisions of subsection (a) of this section shall apply to the amount by which the tax assessment was increased due to rehabilitation.

(c) When vacant rental accommodations are being rehabilitated under this subchapter, the Mayor may defer or forgive any indebtedness owed the District or defer or forgive outstanding tax liens.

(d) A project eligible for tax abatement or deferral or forgiveness of any indebtedness to the District or deferral or forgiveness of tax liens under subsections (a), (b), and (c) of this section shall be subject to certification by the Mayor that it is in the best interest of the District and is consistent with the District's rental property needs in terms of its location, type, and variety of sizes or rental units.

(e) Repealed. (July 17, 1985, D.C. Law 6-10, § 802, 32 DCR 3089; Aug. 25, 1994, D.C. Law 10-155, § 2(c), 41 DCR 4873.)

**Cross references.** — As to establishment of real property tax rates, see § 47-812.

**Section references.** — This section is referred to in § 45-2584.

**Effect of amendments.** — D.C. Law 10-155 repealed (e).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 10-155.** — See note to § 45-2586.

**Termination of Law 6-10.** — See note to § 45-2581.

## § 45-2583. Deferral or forgiveness of water and sewer fees for rehabilitated vacant rental housing.

(a) Where vacant rental accommodations are being rehabilitated under this subchapter, the Mayor may defer or forgive any outstanding water and sewer fees owed by the property.

(b) A project under this section shall be subject to certification by the Mayor that it is in the best interest of the District, and is consistent with the District's rental property needs in terms of its location, type, and variety of sizes of rental units. (July 17, 1985, D.C. Law 6-10, § 803, 32 DCR 3089.)

**Cross references.** — As to water rates, see § 43-1522.  
As to sanitary sewer service charges, see § 43-1605.  
**Section references.** — This section is referred to in § 45-2584.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2581.

## **§ 45-2584. Distressed properties improvement program.**

- (a) The Mayor may establish and administer a distressed property improvement program to assist those housing accommodations which meet the requirements of § 45-2503 (9).
- (b) The distressed property improvement program may include any or all of the following:
- (1) A 5-year deferral or moratorium on real property taxes;
  - (2) Deferral or forgiveness of water and sewer charges in arrears;
  - (3) Deferral or forgiveness of tax liens;
  - (4) Deferral or forgiveness of any indebtedness owed to the District;
  - (5) Low-interest or no-interest loans; and
  - (6) Financial grants.
- (c) Nothing in subsection (b) of this section or this subchapter shall be construed as creating a right or entitlement for any housing provider or other person.
- (d) Distressed properties and new or rehabilitated vacant rental housing under §§ 45-2582 and 45-2583 shall have priority over other properties for participation in the Tenant Assistance Program so long as the tenants who reside in distressed property and who receive assistance from the Tenant Assistance Program are doing so consistent with the provisions of § 45-2533(c). (July 17, 1985, D.C. Law 6-10, § 804, 32 DCR 3089; Feb. 24, 1987, D.C. Law 6-192, § 13(h), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 45-2532, and 45-2585.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-192.** — See note to § 45-2515.

**Termination of Law 6-10.** — See note to § 45-2581.

## **§ 45-2585. Distressed property improvement plan.**

- (a) Upon petition by the housing provider, the Mayor may initiate the development of a distressed property improvement plan utilizing any or all of the mechanisms in § 45-2584(b). The development of the plan shall involve the participation of the housing provider, the tenants or tenants' association and may include the mortgagor.
- (b) A distressed property improvement plan may include, but not be limited to:
- (1) A schedule of repairs and capital improvements;
  - (2) A schedule of services and facilities;
  - (3) A schedule of rents and rent increases;
  - (4) A schedule of mortgage payments which may reflect additional long-term loans to the housing provider for the housing accommodation;

(5) A schedule of additional capital investment in the housing accommodation by the housing provider; and

(6) A schedule of property tax payments, which may also reflect moratoria or deferrals on property tax payments and the abatement or deferral of up to 100% of any tax outstanding on the housing accommodation.

(c) In the development of the distressed property improvement plan, the Mayor may consider:

(1) The interests of tenants in achieving decent, safe, and sanitary housing at affordable rents;

(2) The long-term interest of the housing provider in achieving a sound investment and a reasonable return on the housing provider's investment;

(3) The long-term interest of the mortgagor in achieving a financially secure mortgage; and

(4) The long-term interest of the District in achieving a decent, safe, and sanitary housing accommodation which is fiscally sound and which generates and pays its fair property tax assessment. (July 17, 1985, D.C. Law 6-10, § 805, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501. **Termination of Law 6-10.** — See note to § 45-2581.

## § 45-2586. Incentives for development of single-room-occupancy housing.

(a) The Mayor may provide tax abatements and deferral or forgiveness of water and sewer fees and other indebtedness to the District as incentives for the development of single-room-occupancy housing for low- and moderate-income tenants. These incentives shall be provided pursuant to negotiations and written agreements between the Mayor and housing providers engaged in the development or operation of single-room-occupancy housing accommodations. In these negotiations and written agreements, the Mayor may establish a formula for abating property tax liability for properties developed pursuant to this section for a period of not more than 10 years beginning during the first year that newly-constructed or rehabilitated single-room-occupancy housing becomes available for occupancy.

(b) The incentives provided by this section shall be available for new construction, renovation of any vacant rental housing accommodation, or renovation of any non-housing property, whether vacant or not, for single-room-occupancy housing.

(c) To qualify for the incentives provided by this section, the housing provider shall demonstrate to the satisfaction of the Mayor that the single-room-occupancy housing meets the following minimum standards:

(1) Rental rates are affordable for low- and moderate-income tenants and reflect costs offset by the tax abatements and deferral or forgiveness of indebtedness to the District provided pursuant to this section;

(2) The location is in compliance with the Zoning Regulations of the District of Columbia;

(3) Each rental unit includes no less than 95 square feet of space, and a clothing storage unit;

(4) Toilet and shower or bathing facilities are provided on each floor where tenants reside, in a reasonable size to meet the needs of the tenants residing on that floor;

(5) A common-space day room, kitchen, and laundry facilities sufficient to meet the needs of all tenants at 100% occupancy are provided;

(6) A 24-hour security system, either manual or electronic, is provided; and

(7) The housing accommodation has a resident manager who resides on the premises.

(d) Within 180 days from August 25, 1994, the Mayor shall compile, provide to the Council, and publish in the District of Columbia Register an initial list of District-owned and privately-owned properties in the District that are available and suitable for the development of single-room-occupancy housing in accordance with this section. At least annually thereafter, the Mayor shall publish a revised list and provide a written report to the Council regarding the status of single-room-occupancy housing development at these and other sites. (July 17, 1985, D.C. Law 6-10, § 806, as added Aug. 25, 1994, D.C. Law 10-155, § 2(d), 41 DCR 4873.)

**Effect of amendments.** — D.C. Law 10-155 added this section.

**Legislative history of Law 10-155.** — Law 10-155, the “Single-Room-Occupancy Rental Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-17, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on

first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-271 and transmitted to both Houses of Congress for its review. D.C. Law 10-155 became effective on August 25, 1994. 6-10.

**Termination of Law** — See note to § 45-2581.

## *Subchapter IX. Miscellaneous Provisions.*

### **§ 45-2591. Penalties.**

(a) Any person who knowingly (1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of subchapter II of this chapter, or (2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

(b) Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than \$5,000 for each violation.

(c) Any housing provider who has provided relocation assistance under this chapter may bring a civil action to recover the amount of relocation assistance paid to any person who was not eligible to receive the assistance.

(d) Any person who knowingly or wilfully makes a false or fraudulent application, report, or statement in order to obtain, or for the purpose of obtaining, any grant or payment under the Tenant Assistance Program, or any person ceasing to become eligible for the grant or payment and who does not immediately notify the Department of his or her ineligibility, shall be fined not less than \$50 and not more than \$5,000 for each offense. A person who knowingly and wilfully makes false or fraudulent reports or statements, or of failing to notify promptly the Department of the person's ineligibility, shall repay to the District government all amounts paid by the District government in reliance on the false or fraudulent application, report, or statement, or all amounts paid after eligibility ceases, and shall be liable for interest on the amounts at the rate of  $\frac{1}{2}$  of 1% per month until repaid.

(e) A housing provider who discriminates against a family receiving or eligible to receive Tenant Assistance Program assistance, an elderly tenant, or a family with children when renting housing accommodations shall be fined not more than \$5,000 for each violation. Repeat violators shall be fined not more than \$15,000 for each violation. Nothing in this subsection shall be construed as requiring the rental of a rental unit to a tenant with a child in the case of a single-room-occupancy rental unit designed for occupancy by a single adult living alone.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of subsections (b), (d), and (e) of this section, or any rules or regulations issued under the authority of these subsections, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of these subsections shall be pursuant to subchapters I through III of Chapter 27 of Title 6.

(g) Any person who knowingly, wilfully, and in bad faith makes a false or fraudulent statement to receive a tax credit for not assessing capital improvement increases to an elderly or disabled tenant shall be subject to a fine of not more than \$5,000 for each violation. (July 17, 1985, D.C. Law 6-10, § 901, 32 DCR 3089; Oct. 5, 1985, D.C. Law 6-42, § 408, 32 DCR 4450; Feb. 24, 1987, D.C. Law 6-167, § 3, 33 DCR 6732; Oct. 2, 1987, D.C. Law 7-30, § 5, 34 DCR 5304; Dec. 10, 1987, D.C. Law 7-48, § 4, 34 DCR 6851; Mar. 8, 1991, D.C. Law 8-237, § 23, 38 DCR 314; Sept. 26, 1992, D.C. Law 9-154, § 2(c), 39 DCR 5673; Aug. 25, 1994, D.C. Law 10-155, § 2(e), 41 DCR 4873.)

**Section references.** — This section is referred to in § 45-2555.

**Effect of amendments.** — D.C. Law 9-154 added (g).

D.C. Law 10-155 added the last sentence in (e).

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Legislative history of Law 6-42.** — Law 6-42, the "Department of Consumer and Reg-

ulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-167.** — See note to § 45-2515.

**Legislative history of Law 7-30.** — See note to § 45-2511.

**Legislative history of Law 7-48.** — See note to § 45-2531.

**Legislative history of Law 8-237.** — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-154.** — See note to § 45-2516.

**Legislative history of Law 10-155.** — See note to § 45-2586.

**Termination of Law 6-10.** — Section 907 of D.C. Law 6-10, as amended by § 2(d) of D.C. Law 8-48 and § 818 of D.C. Law 11-52, provided that all subchapters of the act, except III and V, shall terminate on December 31, 2000.

For temporary amendment to the termination provision of D.C. Law 6-10, see § 818 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

**Application of Law 9-154.** — Section 3 of D.C. Law 9-154 provided that the act shall not apply to any increase in a rent ceiling for a rental unit, or to any increase in the rent charged for a rental unit, when the capital improvement petition has been approved by the Rent Administrator and the resultant rent increase was implemented prior to September 26, 1992.

**A suit for retaliation may be brought as an affirmative action,** and is not reserved exclusively for affirmative defenses. Carlton v. Boucher, 118 WLR 2053 (Super. Ct. 1990).

**Tenant acting as private attorney general.** — A tenant who successfully resists an attempt by the landlord to raise the rent by resort to a capital improvement petition acts as

a private attorney general in protecting tenants of low or moderate income from unwarranted increases in their rent. Tenants of 2301 E St., N.W. v. District of Columbia Rental Hous. Comm'n, App. D.C., 580 A.2d 622 (1990).

**Rental Housing Commission is indisputably authorized to impose fines** pursuant to subsection (b) of this section or any other provision of the penalty section. Revithes v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1007 (1987).

**Nature of rollback of rent.** — A rollback of the rent appears to be an equitable measure akin to the reformation of a contract: It alters the amount of rent on which the landlord and the tenant have already agreed, but it does not limit the range of possible rents that may be collected for the unit at some time in the future; a rollback has no effect on the rent ceiling. Afshar v. District of Columbia Rental Hous. Comm'n, App. D.C., 504 A.2d 1105 (1986).

**Analysis of substantial reduction of service under Rental Housing Act of 1977 (D.C. Law 2-54).** — See Interstate Gen. Corp. v. District of Columbia Rental Hous. Comm'n, App. D.C., 501 A.2d 1261 (1985).

**Award of treble damages under Rental Housing Act of 1977 (D.C. Law 2-54) upheld.** — See Interstate Gen. Corp. v. District of Columbia Rental Hous. Comm'n, App. D.C., 501 A.2d 1261 (1985).

**Treble damages supported.** — Substantial evidence supported the award of treble damages. Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).

**“Knowingly” engaging in prohibited conduct.** — See Quality Mgt., Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 505 A.2d 73 (1986).

**Construction of “knowingly” violating rent law.** — See Webb v. District of Columbia Rental Hous. Comm'n, App. D.C., 505 A.2d 467 (1986).

**Cited in Strand v. Frenkel,** 115 WLR 2205 (Super. Ct. 1987); Camacho v. 1440 Rhode Island Ave. Corp., App. D.C., 620 A.2d 242 (1993).

## § 45-2592. Attorney's fees.

The Rent Administrator, Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney's fees to the prevailing party in any action under this chapter, except actions for eviction authorized under § 45-2551. (July 17, 1985, D.C. Law 6-10, § 902, 32 DCR 3089.)

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2591.

**Purpose.** — The purposes of the attorney's

fees provision are to encourage tenants to enforce their own rights, in effect acting as private attorneys general, and to encourage attorneys to accept cases brought under the Rental Housing Act of 1980, and that purpose is

equally effectuated where the tenant successfully resists the landlord-initiated petition as where the tenant prevails on a tenant-initiated petition. The vindication of public as well as private interests by the prevailing tenant does not turn on who initiates the proceeding. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 10 (1990).

**Applicability.** — The *Ungar* presumption, which established that this section creates a presumptive award of attorney's fees to the prevailing party, applies to prevailing tenants in both tenant-initiated and landlord-initiated proceedings. *Hampton Courts Tenants' Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 10 (1990).

**Presumptive award of fees.** — This section entitles prevailing tenants to a presumptive award of attorney's fees; however, prevailing housing providers do not enjoy a presumptive entitlement to attorney's fee awards. *Tenants of 500 23rd St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 617 A.2d 486 (1992).

**Award of attorney's fees permitted.** — This section creates a presumptive award of attorney's fees to the prevailing party; which may be withheld, in the court's discretion, if the equities indicate otherwise. *Ungar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 535 A.2d 887 (1987).

This section creates a presumptive award of attorney's fees to the prevailing party — which may be withheld, in the court's discretion, if the equities indicate otherwise; and there seems no reason why the same presumption should not apply to attorney's fees awards at the administrative level, since the identical statutory language operates at all levels. *Alexander v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 359 (1988).

As a remedy for civil contempt in action under this chapter, the court may award attorney fees to wholly government-funded legal services organization. *Kariuki v. Brown*, 116 WLR 601 (Super. Ct. 1988).

Where tenants caused the commission to rule, for the first time, that landlord's capital improvement petition requesting increase in rent was a contested case within the meaning of the District of Columbia Administrative Procedure Act, and that the landlord had the burden of proof, which it could only meet by affirmatively presenting evidence, and where part of the relief that the prevailing tenants obtained was a refund of the increased rent charged by the landlord as a result of the approval of the capital improvement petition by the rent administrator, relief was same type often awarded to prevailing tenants in tenant-initiated proceedings, and tenants were entitled to presumptive award of attorney's fees.

*Hampton Courts Tenants' Ass'n v. District of Columbia Rental Hous. Comm'n*, App. D.C., 573 A.2d 10 (1990).

**Attorney pro se** tenants should in general be treated like other attorneys in awarding fees under the act. *Alexander v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 359 (1988).

Where attorney pro se obtained remand, and further action by the Commission is required, with a possible subsequent appeal, his status as a prevailing party is not sufficiently determined to warrant an award of attorney fees for his appellate activities at that point. *Alexander v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 359 (1988).

**Amount of attorney's fees.** — The *Ungar* formula (*Ungar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 535 A.2d 887 (1987)) should apply when the bad faith exception to the "American rule" regarding the award of attorney's fees is invoked. *General Fed'n of Women's Clubs v. Iron Gate Inn, Inc.*, App. D.C., 537 A.2d 1123 (1988).

"*Lodestar*" fee was reasonable within the meaning of this section. *Ungar v. District of Columbia Rental Hous. Comm'n*, App. D.C., 535 A.2d 887 (1987).

Factors to consider in determining the appropriate award of attorney's fees are: (1) Time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. However, this test should be coupled with the refinements contained in *District of Columbia v. Hunt*, App. D.C., 525 A.2d 1015 (1987). *Alexander v. District of Columbia Rental Hous. Comm'n*, App. D.C., 542 A.2d 359 (1988).

**Assessment in favor of prevailing housing provider.** — Attorney's fees may be assessed in favor of a prevailing housing provider when the litigation of tenants is frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith. *Tenants of 500 23rd St., N.W. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 617 A.2d 486 (1992).

**Former § 45-1592 cited** in *Curry v. Sutherland*, 111 WLR 1613 (Super. Ct. 1983).

**Cited** in *Camacho v. 1440 Rhode Island Ave. Corp.*, App. D.C., 620 A.2d 242 (1993).

## § 45-2593. Supersedure.

This chapter shall be considered to supersede the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, and the Rental Housing Act of 1980, except that a petition filed with the Rent Administrator under the Rental Housing Act of 1980 shall be determined under the provisions of the Rental Housing Act of 1980. (July 17, 1985, D.C. Law 6-10, § 903, 32 DCR 3089.)

**Cross references.**—As to definitions of the Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, see § 45-2503.

**Legislative history of Law 6-10.**—See note to § 45-2501.

**Termination of Law 6-10.**—See note to § 45-2591.

**Supersedure of Rental Housing Act of 1977, and rules thereunder, by Rental Housing Act of 1980.**—See Hija Lee Yu v. District of Columbia Rental Hous. Comm'n, App. D.C., 505 A.2d 1310 (1986).

**Continuation of original law.**—The substantive rights of both landlords and tenants under the 1977 Act were intended to, and did, continue in force under the 1980 Act. Price v. District of Columbia Rental Hous. Comm'n, App. D.C., 512 A.2d 263 (1986).

**Action under Rental Accommodations Act of 1975 held not barred by statute of limitations.**—See Strand v. Frenkel, App. D.C., 500 A.2d 1368 (1985).

**Amnesty provision of § 45-2515(f) is not available** in proceedings which were initiated by petitions filed under the Rental Housing Act of 1980 (D.C. Law 3-131). Temple v. District of Columbia Rental Hous. Comm'n, App. D.C., 536 A.2d 1024 (1987).

**Cited** in Marshall v. District of Columbia Rental Hous. Comm'n, App. D.C., 533 A.2d 1271 (1987); Boer v. District of Columbia Rental Hous. Comm'n, App. D.C., 564 A.2d 54 (1989); Hanson v. District of Columbia Rental Hous. Comm'n, App. D.C., 584 A.2d 592 (1991).

## § 45-2594. Service.

(a) Unless otherwise provided by Rental Housing Commission regulations, any information or document required to be served upon any person shall be served upon that person, or the representative designated by that person or by the law to receive service of the documents. When a party has appeared through a representative of record, service shall be made upon that representative. Service upon a person may be completed by any of the following ways:

(1) By handing the document to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(2) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;

(3) By mail or deposit with the United States Postal Service properly stamped and addressed; or

(4) By any other means that is in conformity with an order of the Rental Housing Commission or the Rent Administrator in any proceeding.

(b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these acts, shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant. (July 17, 1985, D.C. Law 6-10, § 904, 32 DCR 3089.)

**Cross references.** — As to definitions of the Rental Accommodations Act of 1975, and the Rental Housing Acts of 1977 and 1980, see § 45-2503.

**Section references.** — This section is referred to in §§ 45-2518, 45-2519 and 45-2526.

**Legislative history of Law 6-10.** — See note to § 45-2501.

**Termination of Law 6-10.** — See note to § 45-2591.

**Service of notice to quit.** — Section 45-1406 is specifically intended to govern the service of notices to quit, whereas former § 45-1595 (now expired and replaced by this section) was a more general provision affecting the service of "any information or document," therefore, § 45-1406, which specifically deals with service of a notice to quit, is the proper statute to apply in such situations. *Graham v. Bernstein*, App. D.C., 527 A.2d 736 (1987).

## CHAPTER 26. CONSERVATION EASEMENTS.

Sec.

- 45-2601. Definitions.  
 45-2602. Exemption from recordation and transfer tax.  
 45-2602.1. Rights of the holder of a conservation easement.

Sec.

- 45-2603. Persons who may bring actions.  
 45-2604. Affected interests.  
 45-2605. Application and construction of chapter.

**§ 45-2601. Definitions.**

For the purposes of this chapter, the term:

(1) “Conservation easement” means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, ensuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) “Holder” means 1 of the following:

(A) A governmental body empowered to hold an interest in real property under the laws of the District of Columbia or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, ensuring the availability of real property for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(3) “Third-party right of enforcement” means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder. (May 16, 1986, D.C. Law 6-113, § 2, 33 DCR 1996.)

**Section references.** — This section is referred to in § 45-2602.

**Legislative history of Law 6-113.** — Law 6-113, the “District of Columbia Uniform Conservation Easement Act of 1986,” was introduced in Council and assigned Bill No. 6-55, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 25, 1986, and March 11, 1986, respectively. Signed by the Mayor on March 24, 1986, it was assigned Act No. 6-143 and transmitted to both Houses of Congress for its review.

**Community Development Block Grant Program.** — Pursuant to Resolution 6-768, the “Community Development Block Grant Pro-

gram Resolution of 1986,” effective July 8, 1986, the Council authorized the Mayor to revise the proposed final statement to include the homestead housing preservation program as an activity to permit the use of CDBG funds for initial program staff, approved the revised final statement, and authorized the Mayor to submit the revised final statement to HUD.

**Scope of chapter.** — Although some special merit projects and the attendant amenities may fall within the scope of the Uniform Conservation Easement Act, covenants not associated with nature-related or culture-related values do not. *Committee of 100 v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 571 A.2d 195 (1990).

**§ 45-2602. Exemption from recordation and transfer tax.**

(a)(1) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, provided that the recordation of any conservation easement as defined in § 45-2601, or of any assignment, release, modification, termination, or other alteration of a conservation easement shall be exempt from the recordation tax imposed by § 45-923, and from the transfer tax imposed by § 47-903.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply if the consideration for the conservation easement exceeds \$100 in value.

(b) No right or duty in favor of or against a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in § 45-2603(b), a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement is valid even under the following circumstances:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract. (May 16, 1986, D.C. Law 6-113, § 3, 33 DCR 1996; Apr. 30, 1988, D.C. Law 7-104, § 25, 35 DCR 147.)

**Cross references.** — As to imposition and return of recordation tax on deeds, see § 45-923.

**Legislative history of Law 6-113.** — See note to § 45-2601.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill

No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**§ 45-2602.1. Rights of the holder of a conservation easement.**

Whenever a recorded conservation easement has been registered with the Mayor, written consent of the holder of the registered and recorded conservation easement shall be required prior to the recordation of a subdivision by the Office of the Surveyor, and to the issuance of a permit for construction, demolition, alteration, or repair, except solely for interior work. With respect to

the affected property, a conservation easement shall be deemed registered with the Mayor 10 days after proof of a recorded conservation easement is presented to the Historic Preservation Division of the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs. (May 16, 1986, D.C. Law 6-113, § 3(a), as added Mar. 17, 1993, D.C. Law 9-233, § 2, 40 DCR 603.)

**Legislative history of Law 9-233.** — Law 9-233, the “District of Columbia Uniform Conservation Easement Act of 1986 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-122, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-364 and transmitted to both Houses of Congress for its review. D.C. Law 9-233 became effective on March 17, 1993.

### **§ 45-2603. Persons who may bring actions.**

(a) An action affecting a conservation easement may be brought by 1 of the following:

- (1) An owner of an interest in the real property burdened by the easement;
- (2) A holder of the easement;
- (3) A person having a third-party right of enforcement; or
- (4) A person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. (May 16, 1986, D.C. Law 6-113, § 4, 33 DCR 1996.)

**Section references.** — This section is referred to in § 45-2602.

**Legislative history of Law 6-113.** — See note to § 45-2601.

### **§ 45-2604. Affected interests.**

(a) This chapter applies to any interest created after May 16, 1986, which complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before May 16, 1986, if it would have been enforceable had it been created after May 16, 1986, unless retroactive application contravenes the laws of the District of Columbia or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement, a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of the District of Columbia. (May 16, 1986, D.C. Law 6-113, § 5, 33 DCR 1996.)

**Legislative history of Law 6-113.** — See note to § 45-2601.

**§ 45-2605. Application and construction of chapter.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the chapter among states enacting it. (May 16, 1986, D.C. Law 6-113, § 6, 33 DCR 1996.)

**Legislative history of Law 6-113.** — See note to § 45-2601.

## CHAPTER 27. HOMESTEAD HOUSING PRESERVATION.

Sec.	Sec.
45-2701. Findings.	45-2706. Program guidelines.
45-2702. Purpose.	45-2707. Property transfer.
45-2703. Definitions.	45-2708. Abatement agreement.
45-2704. Homestead Housing Preservation Program and Homestead Program Administration established.	45-2709. Proposals to develop a Technical Training Program.
45-2705. Program inventory.	45-2710. Appropriation; reports.
	45-2711. Notice.

**§ 45-2701. Findings.**

The Council of the District of Columbia (“Council”) finds that:

(1) There exists an immediate crisis regarding the critical shortage of decent and affordable low- and moderate-income housing resulting in significant measure from the lack of maintenance and the deterioration of rental housing, the lack of adequate financial investment in rental housing by owners and private investors, the abandonment of low- and moderate-income rental housing by owners resulting from outstanding government liens, the lack of incentives for tenants to improve the rental property, and the ineffectiveness of traditional means of abating housing code violations on rental property.

(2) Based on 1980 census data, there are approximately 9,800 units that are currently vacant and approximately 60,000 units in need of rehabilitation.

(3) There are numerous properties that, because of their deteriorating condition, adversely affect the health, comfort, safety, and welfare of those persons who reside in and around them. (Aug. 9, 1986, D.C. Law 6-135, § 2, 33 DCR 3771.)

**Legislative history of Law 6-135.** — Law 6-135, the “Homestead Housing Preservation Act of 1986,” was introduced in Council and assigned Bill No. 6-168, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-173 and transmitted to both Houses of Congress for its review.

**Approval of community development objectives and projected use of funds.** — Pursuant to Resolution 6-768, the “Community Development Block Grant Program Resolution of 1986,” effective July 8, 1986, the Council approved the revised program description and authorized the allocation of funds.

**Cited** in *District of Columbia v. Mayhew*, App. D.C., 601 A.2d 37 (1991).

**§ 45-2702. Purpose.**

In enacting this act, the Council supports the following statutory purposes:

(1) To provide homeownership opportunities to low- and moderate-income persons;

(2) To enable organized groups of low- and moderate-income persons to obtain skills to repair, maintain, and manage residential property; and

(3) To afford highly-motivated low- and moderate-income persons the opportunity to participate fully in the production of their own decent and affordable homes. (Aug. 9, 1986, D.C. Law 6-135, § 3, 33 DCR 3771.)

**Legislative history of Law 6-135.** — See note to § 45-2701. in the introductory language, is D.C. Law 6-135.

**References in text.** — “This act,” referred to

## § 45-2703. Definitions.

For the purposes of this act, the term:

(1) “Administrator” means the Administrator of the Homestead Program Administration.

(2) “Cooperative housing association” means an association that is incorporated in accordance with Chapter 11 of Title 29, and organized for the purpose of owning and operating residential real property in the District of Columbia (“District”), the shareholders or members of which, by reason of their ownership of a stock or membership certificate, a proprietary lease, or other evidence of membership, are entitled to occupy a dwelling unit pursuant to the terms of a proprietary lease or occupancy agreement. To qualify for participation in the Program established pursuant to § 45-2704, a cooperative housing association must be organized for the purpose of providing homeownership opportunities for low- or moderate-income persons.

(3) “Dwelling unit” means any room or group of rooms forming a single unit that is used or intended to be used for living, sleeping, and the preparation and eating of meals, and that is located within a building that is wholly or partially used or intended to be used for living and sleeping by human occupants.

(4) “Homesteader” means an individual or an organization representing an individual who is entitled to occupy a dwelling unit in a building that is included in the Program established under § 45-2704 and who is occupying or will occupy the dwelling unit under an abatement agreement entered into between the Administrator and the individual or organization.

(5) “Low-income persons” means persons or families whose annual household income as determined by the Administrator does not exceed the limits for lower income families established by the Mayor for use in connection with the Tenant Assistance Program established pursuant to subchapter III of Chapter 25 of this title.

(6) “Mayor” means the Mayor of the District.

(7) “Moderate-income persons” means persons or families whose annual household income as determined by the Administrator does not exceed 120% of the lower income guidelines established pursuant to 42 U.S.C. § 1437f, for the Washington Standard Metropolitan Statistical Area (“SMSA”), as the median is determined by the United States Department of Housing and Urban Development and adjusted yearly by historic trends of that median, and as may be further adjusted by an interim census of District incomes by local or regional government agencies.

(8) “Large multi-family dwelling” means a building containing 5 or more dwelling units each with access to the outside directly or through a common stairway or hallway.

(9) “Nonprofit developer” means a corporation that has been approved by the Internal Revenue Service as exempt from federal income tax under 26

U.S.C. § 501(c)(3), and that is organized for the purpose of developing housing for low- or moderate-income persons.

(10) "Single-family dwelling" means a building containing 1 dwelling unit.

(11) "Small multi-family dwelling" means a building containing 2 to 4 dwelling units each with access to the outside directly or through a common stairway or hallway.

(12) "Tenant association" means a cooperative housing association that represents a minimum of 51% of the households in a building, as determined by rules established by the Administrator. (Aug. 9, 1986, D.C. Law 6-135, § 4, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(a), 33 DCR 7836.)

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and

November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

**References in text.** — "This act," referred to in the introductory language, is D.C. Law 6-135.

## **§ 45-2704. Homestead Housing Preservation Program and Homestead Program Administration established.**

(a) There is established a Homestead Housing Preservation Program ("Program") for the District, the purpose of which is to provide a program under which title to property acquired by the District pursuant to § 47-847, may be transferred to organizations or individuals meeting the criteria established in §§ 45-2706 to 45-2708 and any rules promulgated pursuant to this act. The Program shall not include owner-occupied, single-family dwellings.

(b) The Program established under this act shall be administered by the Administrator of the Homestead Program Administration.

(c) Within 90 days after August 9, 1986, the Administrator shall develop and transmit to the Council for consideration in accordance with this subsection rules to carry out the purposes of this act. At a minimum, the rules shall establish procedures for administering the Program, define terms not otherwise defined in this act, and formulate standards consistent with this act for participation in the Program. Simultaneous with transmittal of the rules, the Administrator shall transmit to the Council for approval under this section an administrative plan for the Program which shall contain, at minimum, the following information:

(1) A current list of all buildings that qualify for inclusion in the Program; a statement of the address, ward location, and condition of each building; and a discussion of the suitability of each building for transfer to homesteaders;

(2) Notice provisions for owners of property to be included in the Program and samples of any notice that will be sent to owners of property to be included in the Program prior to the property becoming available for purchase by individuals or organizations under the Program;

(3) An explanation of any changes in existing notices to property owners necessitated by this act;

- (4) A current dollar statement of family income limits for the Program;
  - (5) A sample Request for Proposals (“RFP”) for buildings that are to be included in the Program;
  - (6) A sample RFP for the Technical Training Program described in § 45-2709;
  - (7) A sample of the abatement agreement or agreements that will be used in the Program; and
  - (8) Samples of all loan application forms that will be used in the Program.
- (d) All rules issued pursuant to this act and the administrative plan required by subsection (c) of this section shall be transmitted to the Council for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days when the Council is in recess. The Council may adopt a resolution disapproving the rules or administrative plan, in whole or part, within the 45-day review period. If the Council, by resolution, does not approve or disapprove the rules or administrative plan before the expiration of the 45-day review period, the rules or administrative plan shall become effective at the expiration of the 45-day review period.
- (e) There is hereby established within the District of Columbia Department of Housing and Community Development, a Homestead Program Administration, to be headed by an Administrator, to be appointed by the Mayor with the advice and consent of the Council. In nominating the Administrator, the Mayor shall give preference to a person who has demonstrated administrative experience with a homesteading program. (Aug. 9, 1986, D.C. Law 6-135, § 5, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(b), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 45-2703, 45-2706, 45-2707 and 45-2711.

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

**References in text.** — “This act,” referred to in subsections (a) through (d), is D.C. Law 6-135.

**Approval of amendments to rules for real property taxes.** — Pursuant to Resolution 7-72, the “Homestead Housing Tax Sale Amendment Approval Resolution of 1987,” effective June 2, 1987, the Council approved proposed amendments to Chapter 3, Title 9 DCMR, rules for real property taxes which were transmitted to Council by the District of Columbia Homestead Program Administration, Department of Housing and Community Development.

**Approval, in part, and disapproval, in part, of proposed rules and administrative plan.** — Pursuant to Resolution 7-97, the “Homestead Housing Program Approval and Disapproval Resolution of 1987,” effective July 14, 1987, the Council, approved, in part, and disapproved, in part, the proposed rules and administrative plan for the Homestead Housing Preservation Program.

**Notice of inclusion in program.** — Appellants who successfully bid for property at an auction held following the nonpayment by the owner of a nuisance assessment against the property and who paid the full amount of their bid within five days as required by § 47-1304 and received a tax certificate were entitled to notice of the District’s intent to include the property in the Homestead Program. *Massie v. District of Columbia*, App. D.C., 634 A.2d 1226 (1993).

## § 45-2705. Program inventory.

- (a) The Mayor shall identify and publish in the D.C. Register on a semi-annual basis a list of properties, the titles to which are available for transfer under the Program. The properties shall be properties for which the statutory redemption period has lapsed. In addition to publication in the D.C. Register,

the list shall be published in at least 2 major newspapers circulated in the District and through other reasonable methods determined by the Mayor and shall be transmitted to the Council, Advisory Neighborhood Commissions, Community Development Corporation, and any other organizations the Administrator deems appropriate.

(b) Along with the list of properties required to be published under subsection (a) of this section, the Administrator shall publish a RFP inviting the submission of proposals for purchase of any of the properties listed. Proposals submitted to the Administrator shall be evaluated in accordance with this act and rules promulgated pursuant to this act. Each proposal shall outline financial and structural plans for the repair, occupancy, maintenance, and ownership of the property and shall contain any other information required by this act or any rules promulgated pursuant to this act. (Aug. 9, 1986, D.C. Law 6-135, § 6, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(c), 33 DCR 7836.)

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

**References in text.** — "This act," referred to in subsection (b), is D.C. Law 6-135.

## **§ 45-2706. Program guidelines.**

(a) Proposals for large multi-family dwellings shall be considered only in accordance with the following rules of priority:

(1) A proposal from a qualified tenant association shall be considered first.

(2) If there is no proposal from a qualified tenant association or if the proposal does not meet criteria set forth in the RFP and rules promulgated pursuant to this act, proposals from cooperative housing associations shall be considered next.

(3) If there are no proposals from cooperative housing associations or if the proposals do not meet criteria set forth in the RFP and rules promulgated pursuant to this act, proposals from nonprofit developers for the development of cooperative housing opportunities shall be considered next.

(b) At least 25% of the proprietary interests in large multi-family dwellings in the Program shall be transferred to low- or moderate-income persons. No less than 15% of the proprietary interests in large multi-family dwellings in the Program shall be transferred to low-income persons. At least 50% of the total dwelling units and proprietary interests in the Program shall be transferred to low-or moderate-income persons.

(c) Proposals for single-family and small multi-family dwellings may be considered in accordance with standards developed by the Administrator and approved by the Council pursuant to § 45-2704. To the extent financially feasible, priority shall be given to purchasers who are low- or moderate-income persons. (Aug. 9, 1986, D.C. Law 6-135, § 7, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(d), 33 DCR 7836.)

**Section references.** — This section is referred to in § 45-2704.

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703. in subsections (a)(2) and (a)(3), is D.C. Law 6-135.

**References in text.** — "This act," referred to

## § 45-2707. Property transfer.

(a) The Administrator shall sell each building in the Program for \$250 per dwelling unit. Single-family and small multi-family dwellings shall be sold at prices determined by the Administrator after considering the income level of the purchaser, the condition of the property, and such other factors as the Administrator deems appropriate pursuant to rules. In transferring single-family dwellings with 1 dwelling unit, priority shall be given to low-income persons. At least 1 dwelling unit in small multi-family dwellings of 2 to 4 dwelling units shall be transferred to a low- or moderate-income person. Any rules or factors developed by the Administrator for consideration in connection with the transfer of single-family and small multi-family dwellings shall be transmitted to the Council for review and approval pursuant to § 45-2704.

(b) Individuals residing in buildings in which dwelling units are rented or offered for rent at the time of inclusion of the building in the Program shall be given the right of first refusal to purchase a proprietary interest in the unit in which they reside or in a comparable unit within the building provided that the resident agrees to join a tenant association or cooperative housing association that qualifies for participation in the Program. Those individuals who do not elect to purchase shall have the right to relocation assistance, consistent with § 45-1621. If the individual is an elderly tenant, within the meaning of § 45-1616, he or she shall be entitled to the protection afforded by that section.

(c) Individuals who are not tenants in a building included in the Program shall participate in the Program individually or through a nonprofit developer or cooperative housing association.

(d) With the exception of those individuals occupying a building at the time that the building is included in the Program, acceptance of individuals as potential homesteaders shall be limited to first-time home buyers, as defined in rules promulgated by the Administrator and approved by the Council pursuant to § 45-2704.

(e) The Administrator may provide to low- or moderate-income individuals a second mortgage not to exceed \$10,000 per dwelling unit for the cost of repairs of the unit. The homesteaders shall not be required to repay the mortgage until the unit is transferred, as that term is defined in rules promulgated by the Administrator and approved by the Council pursuant to § 45-2704, at which time the entire \$10,000 shall become due and owing, plus interest. (Aug. 9, 1986, D.C. Law 6-135, § 8, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(e), 33 DCR 7836.)

**Section references.** — This section is referred to in § 45-2704.

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

**§ 45-2708. Abatement agreement.**

(a) At the time of settlement, the homesteader shall take free and clear title to property subject only to the terms of an abatement agreement and this act. Each homesteader at the time of property settlement shall enter into an abatement agreement with the District, which shall include, but shall not be limited to, requirements that the homesteader perform the following:

(1) The homesteader shall maintain the property as his or her principal dwelling place and residence for a period commencing with the date of property settlement and ending on the 5th anniversary of the settlement date. If the property cannot be lawfully occupied on the settlement date, the homesteader shall be considered in compliance with this residency provision if he or she takes occupancy within a reasonable period of time after the property has been brought into compliance with the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986 ("Building Code"), and the District of Columbia Housing Code (14 DCMR Chapter 1-14) ("Housing Code").

(2) The homesteader shall participate in a Technical Training Program to be administered and conducted by groups selected pursuant to § 45-2709.

(3) The homesteader shall improve the property within 12 months of the starting date of the Technical Training Program to meet all applicable requirements of the Building Code and Housing Code.

(4) The homesteader shall not sell, convey, lease, or otherwise alienate the property, or place liens or encumbrances on it, for at least 5 years from the date of property settlement without the written approval of the District.

(5) During the 5-year period, the homesteader shall permit periodic inspections of the property by the District or its agents or other persons duly authorized by the District for the purpose of determining the homesteader's compliance with the requirements of the Program.

(6) The homesteader shall maintain at all times during the 5-year period fire and extended coverage insurance with a face amount equal to at least 80% of the fair market value of the property.

(7) The homesteader shall pay all taxes, fees, and assessments on the property from the date of settlement, except as otherwise provided in District law.

(b) Organizations to which buildings have been transferred shall certify that their members or other individuals who will reside in the buildings will meet the requirements of the abatement agreement and any other terms and conditions of the transfer imposed by the Administrator.

(c) Notwithstanding the provisions of subsection (a) of this section, if the homesteader dies or becomes totally disabled during the first 5 years after the original transfer to the homesteader, the homesteader's personal representative may petition the Administrator on behalf of the homesteader's heirs, devisees, and immediate family for an exemption from all or part of the terms of the abatement agreement. In ruling on the petition, the Administrator shall attempt to avoid any unreasonable burden upon the homesteader's heirs, devisees, and immediate family.

(d) In the event a homesteader, or 1 of its organizational members, has received written approval from the District to alienate his or her interest in the property during the first 5 years of ownership, the homesteader shall pay to the District an assessment fee according to the following formula:

(1) Eighty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 0 to 15 months after the original acquisition;

(2) Sixty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 16 to 30 months after the original acquisition;

(3) Forty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 31 to 45 months after the original acquisition; and

(4) Twenty percent of the tax assessment value of his or her property (as determined at the time of original acquisition by the homesteader), if the alienation occurs within 46 to 60 months after the original acquisition.

(e) Assessment fees shall not take priority over any mortgage liens.

(f) The holder of a mortgage secured by the homesteader's building or dwelling unit shall be exempt from the terms of the abatement agreement if the homesteader defaults on the mortgage. (Aug. 9, 1986, D.C. Law 6-135, § 9, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(f), 33 DCR 7836; Mar. 21, 1987, D.C. Law 6-216, § 13(i), 34 DCR 1072.)

**Section references.** — This section is referred to in § 45-2704.

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

**Legislative history of Law 6-216.** — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

**References in text.** — "This act," referred to in the first sentence of subsection (a), is D.C. Law 6-135.

The "Construction Codes Approval and Amendments Act of 1986," referred to in subsection (a) (1), is D.C. Law 6-216.

## § 45-2709. Proposals to develop a Technical Training Program.

(a) The Administrator shall issue a RFP inviting organizations to submit proposals for the development and implementation of a Technical Training Program consistent with this act and rules promulgated pursuant to this act.

(b) The Technical Training Program shall contain, at minimum, the following training elements:

(1) Teaching individuals the legal rights and responsibilities of cooperative and other forms of homeownership;

(2) Training individuals in financial management to assist them in meeting the financial responsibilities of homeownership;

(3) Providing individuals with technical skills that will permit them to identify and correct conditions that are unsafe or that may otherwise lead to deterioration of the property; and

(4) Providing individuals with such other skills and information as may be required by rule. (Aug. 9, 1986, D.C. Law 6-135, § 10, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(g), 33 DCR 7836.)

**Section references.** — This section is referred to in §§ 45-2704 and 45-2708.

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

**References in text.** — “This act,” referred to in subsection (a), is D.C. Law 6-135.

## § 45-2710. Appropriation; reports.

(a) There may be appropriated out of revenues available to the District sufficient funds to administer the Program. Beginning with the budget submission for Fiscal Year 1988, the Administrator shall include in the budget submission to the Council a statement of goals and objectives regarding the number of properties contemplated for inclusion in the Program in the upcoming fiscal year and a projection of the funds that would be necessary to permit transfer and repair of the property under the Program.

(b) Thirty days after the end of the first full calendar quarter after August 9, 1986, and 30 days after the end of each calendar quarter thereafter, the Administrator shall submit to the Council a report on the progress in implementing the Program. The report shall include, but not be limited to, the following information:

(1) The ward location, size, and assessed value of each property transferred under the Program;

(2) A list of all properties remaining in the Program at the close of the quarter;

(3) The individuals or organizations that were transferees under the Program and the sales price and other terms of transfers made under the Program during the preceding quarter; and

(4) A description of assistance provided to transferees under the Program. (Aug. 9, 1986, D.C. Law 6-135, § 11, 33 DCR 3771; Feb. 24, 1987, D.C. Law 6-192, § 5(h), 33 DCR 7836.)

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Legislative history of Law 6-192.** — See note to § 45-2703.

## § 45-2711. Notice.

Pursuant to rules issued in accordance with § 45-2704, the Mayor shall give:

(1) Reasonable advance notice to the record owners and affected parties of properties brought to tax sale in accordance with § 47-1205(b) and (c); and

(2) Reasonable advance notice of properties scheduled to be sold and the date of sale by advertising the list of properties in a newspaper of general circulation published in the District of Columbia at least once every 2 weeks. (Aug. 9, 1986, D.C. Law 6-135, § 12, 33 DCR 3771.)

**Legislative history of Law 6-135.** — See note to § 45-2701.

**Parties entitled to notice.** — Appellants who successfully bid for property at an auction

held following the nonpayment by the owner of a nuisance assessment against the property and who paid the full amount of their bid within five days as required by § 47-1304 and

received a tax certificate were entitled to notice of the District's intent to include the property in the Homestead Program. *Massie v. District of Columbia*, App. D.C., 634 A.2d 1226 (1993).

**Cited** in *District of Columbia v. Mayhew*, App. D.C., 601 A.2d 37 (1991).

## CHAPTER 28. REAL PROPERTY WET SETTLEMENT.

Sec.  
 45-2801. Definitions.  
 45-2802. Applicability.  
 45-2803. Duties of lender.  
 45-2804. Duties of owners and brokers.

Sec.  
 45-2805. Duties of settlement agent.  
 45-2806. Validity of loan documents.  
 45-2807. Penalty.

**§ 45-2801. Definitions.**

For the purposes of this chapter, the term:

(1) "Disbursement of loan funds" means the delivery of loan funds by a lender to a settlement agent in the form of:

- (A) Cash;
- (B) Wired funds;
- (C) Certified checks;
- (D) Checks issued by the District of Columbia;
- (E) Cashier's checks; or

(F) Checks drawn on a financial institution the accounts of which are insured by an agency of the federal, a state, or the District of Columbia government, and are located within the Fifth Federal Reserve District.

(2) "Disbursement of settlement proceeds" means the payment of all proceeds of a transaction by a settlement agent to the persons entitled to receive the proceeds.

(3) "Lender" means any person regularly engaged in making loans secured by mortgages or by deeds of trust on real estate.

(4) "Loan closing" means that time agreed upon by a borrower and a lender when the execution of the loan documents by the borrower occurs.

(5) "Loan documents" means a note evidencing a debt due a lender, a deed of trust or a mortgage securing a debt due a lender, and any other documents required by a lender to be executed by a borrower as part of a transaction.

(6) "Loan funds" means the gross or net proceeds of the loan to be disbursed by a lender at loan closing.

(7) "Parties" means a seller, a purchaser, a borrower, a lender, and a settlement agent.

(8) "Settlement" means the time when the settlement agent has received a duly executed deed, loan funds, loan documents, and other documents and certified funds required to carry out the terms of a contract between the parties, and the settlement agent can reasonably determine that prerecordation conditions of the contract have been satisfied.

(9) "Settlement agent" means a person responsible for conducting a settlement and disbursement of the settlement proceeds. (Feb. 24, 1987, D.C. Law 6-187, § 2, 33 DCR 7681.)

**Legislative history of Law 6-187.** — Law 6-187, the "Real Property Wet Settlement Act of 1986," was introduced in Council and assigned Bill No. 6-60, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on October 21, 1986, and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned Act No. 6-238 and transmitted to both Houses of Congress for its review.

**§ 45-2802. Applicability.**

This chapter applies only to transactions involving purchase money loans made by lenders that are secured by first or second deeds of trust or mortgages, excluding second deeds of trust or mortgages for refinancing purposes only, on real estate containing not more than 4 residential dwelling units. (Feb. 24, 1987, D.C. Law 6-187, § 3, 33 DCR 7681.)

**Legislative history of Law 6-187.** — See note to § 45-2801.

**§ 45-2803. Duties of lender.**

A lender shall, at or before loan closing, cause disbursement of loan funds to a settlement agent. A lender shall not receive or charge any interest on a loan until disbursement of loan funds and loan closing have occurred, and shall not require payment of any interest in advance. For purposes of this section, the term "interest" means any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forbearance of money as defined in § 28-3311, except that for purposes of this section, the term "interest" shall not include any loan fee, origination fee, service and carrying charge, investigator's fee, or point under § 28-3301 (e). (Feb. 24, 1987, D.C. Law 6-187, § 4, 33 DCR 7681.)

**Legislative history of Law 6-187.** — See note to § 45-2801.

**§ 45-2804. Duties of owners and brokers.**

The owner and real estate broker shall have in place, at or before settlement, all documents, deeds, titles, recordation tax returns, certified checks, and any other monies needed for settlement so that disbursements can be made in a timely manner. (Feb. 24, 1987, D.C. Law 6-187, § 5, 33 DCR 7681.)

**Legislative history of Law 6-187.** — See note to § 45-2801.

**§ 45-2805. Duties of settlement agent.**

A settlement agent shall cause recordation of the deed, the deed of trust or mortgage, or other documents required to be recorded, and shall cause disbursement of settlement proceeds within 1 business day of settlement. At least 5 days prior to settlement, the settlement agent shall inform the seller of the terms of this chapter. If settlement is delayed, the settlement agent shall notify, in writing, all of the settlement parties explaining the reasons for the delay. If any of the reasons listed are the fault of a settlement agent or of the lender, the settlement agent or the lender at fault shall be subject to the provisions of § 45-2807. (Feb. 24, 1987, D.C. Law 6-187, § 6, 33 DCR 7681.)

**Legislative history of Law 6-187.** — See note to § 45-2801.

**§ 45-2806. Validity of loan documents.**

Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents. (Feb. 24, 1987, D.C. Law 6-187, § 7, 33 DCR 7681.)

**Legislative history of Law 6-187.** — See note to § 45-2801.

**§ 45-2807. Penalty.**

(a) Any person suffering a loss due to the failure of a lender or of a settlement agent to cause disbursement as required by this chapter shall be entitled to recover, in addition to the amount of actual damages, double the amount of any interest collected in violation of this chapter, plus any reasonable attorneys' fees incurred in the collection of that amount.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27 of Title 6. (Feb. 24, 1987, D.C. Law 6-187, § 8, 33 DCR 7681; Mar. 8, 1991, D.C. Law 8-237, § 15, 38 DCR 314.)

**Section references.** — This section is referred to in § 45-2805.

**Legislative history of Law 6-187.** — See note to § 45-2801.

**Legislative history of Law 8-237.** — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned

Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

**CHAPTER 29. REAL PROPERTY CREDIT LINE DEEDS OF TRUST.**

Sec.

45-2901. Definitions.

45-2902. Notice requirements.

Sec.

45-2903. Priority of credit line deed of trust.

**§ 45-2901. Definitions.**

For the purposes of this chapter, the term:

- (1) "Credit line deed of trust" means any deed of trust in which title to real property located in the District of Columbia is conveyed, transferred, encumbered, or pledged to secure repayment of money that is loaned in the form of periodic advances by the noteholder named in the credit line deed of trust.
- (2) "Real property" has the meaning set forth in § 47-802(1).
- (3) "Single family residential property" shall have the same meaning as the term has in § 47-803(6). (Jan. 28, 1988, D.C. Law 7-67, § 2, 34 DCR 7441; Mar. 11, 1992, D.C. Law 9-72, § 2(a), 39 DCR 20.)

**Legislative history of Law 7-67.** — Law 7-67, the "Real Property Credit Line Deed of Trust Act of 1987," was introduced in Council and assigned Bill No. 7-163, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 13, 1987, and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-100 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-72.** — Law

9-72, the "District of Columbia Real Property Credit Line Deed of Trust Clarification Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-70, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-123 and transmitted to both Houses of Congress for its review.

**§ 45-2902. Notice requirements.**

(a) A credit line deed of trust shall include:

(1) On the front page, either in capital letters or underscored, the words "THIS IS A HOME EQUITY CREDIT LINE DEED OF TRUST. DEFAULT ON PAYMENTS MAY RESULT IN THE LOSS OF YOUR HOME.";

(2) Language to convey notice to all parties that the noteholder, the grantors, and other borrowers identified have an agreement whereby the noteholder may make or contemplates making advances from time to time against the security described in the credit line deed of trust;

(3) The maximum aggregate amount of principal to be secured at any 1 time; and

(4) An explicit statement of the rights and obligations of the borrower and the consequences of default.

(b) Failure to provide the notice required by subsection (a) of this section shall be deemed an unlawful trade practice punishable under Chapter 39 of Title 28.

(c) This section shall apply only to a credit line deed of trust for single family residential property. (Jan. 28, 1988, D.C. Law 7-67, § 3, 34 DCR 7441; Mar. 11, 1992, D.C. Law 9-72, § 2(b), 39 DCR 20.)

**Effect of amendments.** — D.C. Law 9-72 added (c).

**Legislative history of Law 7-67.** — See note to § 45-2901.

**Legislative history of Law 9-72.** — See note to § 45-2901.

**§ 45-2903. Priority of credit line deed of trust.**

(a) From the date of the recording of a credit line deed of trust, the credit line deed of trust shall have priority:

(1) Over all other deeds, conveyances, or other instruments, or contracts in writing, that are unrecorded as of that date and of which the noteholder has no knowledge or notice; and

(2) Over judgment liens subsequently recorded, except that a judgment creditor who gives notice of the judgment to the noteholder of record at the address listed in the credit line deed of trust shall have priority over the credit line deed of trust in the case of advances that are made after the date of the noteholder's receipt of the notice and that were not irrevocably committed prior to this date.

(b) Mechanic's liens established pursuant to Chapter 1 of Title 38, shall have priority over all advances made under a credit line deed of trust subsequent to the filing of a notice of mechanic's lien, but shall not have priority over advances made prior to the filing of a notice of mechanic's lien.

(c) Except as provided in subsections (a)(2) and (b) of this section, the priority of a credit line deed of trust shall extend to all advances made following the recordation of the credit line deed of trust. Amounts outstanding, together with interest, shall continue to have priority until paid or otherwise settled.

(d) Nothing in this chapter shall apply to the priority of purchase money security interests in goods and fixtures. (Jan. 28, 1988, D.C. Law 7-67, § 4, 34 DCR 7441.)

**Legislative history of Law 7-67.** — See note to § 45-2901.

## CHAPTER 30. SENIOR CITIZENS' HOME REPAIR AND IMPROVEMENT PROGRAM FUND.

Sec.  
 45-3001. Definitions.  
 45-3002. Establishment of Fund.  
 45-3003. Sources of monies for loans.  
 45-3004. Eligibility for loans.

Sec.  
 45-3005. Repayment of loans.  
 45-3006. Issuance of rules.  
 45-3007. Mayor's report to Council.

### § 45-3001. Definitions.

For the purposes of this chapter, the term:

- (1) "Council" means the Council of the District of Columbia.
- (2) "District" means the District of Columbia.
- (3) "Fund" means the Senior Citizens' Home Repair and Improvement Program Fund established by § 45-3002.
- (4) "Lower income" means a household within the Section 8 lower income guidelines established by the Secretary of the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437f.
- (5) "Mayor" means the Mayor of the District of Columbia.
- (6) "Principal place of residence" means a dwelling unit in which a person lives in a particular locality with the intent to make it a fixed and permanent home of the senior citizen.
- (7) "Senior citizen homeowner" means the owner resident of residential real property who is 60 years of age or older. (Mar. 24, 1988, D.C. Law 7-96, § 2, 35 DCR 891.)

**Legislative history of Law 7-96.** — Law 7-96, the "Senior Citizens' Home Repair and Improvement Program Fund Act of 1987," was introduced in Council and assigned Bill No. 7-167, which was referred to the Committee on Human Services. The Bill was adopted on first

and second readings on December 8, 1987, and January 5, 1988, respectively. Signed by the Mayor on February 3, 1988, it was assigned Act No. 7-140 and transmitted to both Houses of Congress for its review.

### § 45-3002. Establishment of Fund.

(a) There is established in the District a revolving Senior Citizens' Home Repair and Improvement Program Fund to be administered by the Mayor for the purpose of providing loans up to \$5,000 to lower income senior citizen homeowners to enable them to make repairs and improvements to ensure health and safety in their principal places of residence.

(b) There may be appropriated out of the revenue of the District an amount necessary to carry out the purposes of this chapter. (Mar. 24, 1988, D.C. Law 7-96, § 3, 35 DCR 891.)

**Section references.** — This section is referred to in § 45-3001.

**Legislative history of Law 7-96.** — See note to § 45-3001.

### § 45-3003. Sources of monies for loans.

The fund shall consist of, but not be limited to, monies from the following sources:

- (1) Appropriations pursuant to this chapter;
- (2) Grants and gifts from public or private sources to the fund or to the District for the purposes of the fund;
- (3) Repayments on principal and any interest on loans provided from the fund;
- (4) Proceeds realized from the liquidation of any security interests held by the District under the terms of any assistance provided from the fund;
- (5) Interest earned from the deposit or investment of monies of the fund;
- (6) Monies appropriated for the fund by the United States government; and
- (7) All other revenues, receipts, and fees derived from the operation of the fund. (Mar. 24, 1988, D.C. Law 7-96, § 4, 35 DCR 891.)

**Legislative history of Law 7-96.** — See note to § 45-3001.

### **§ 45-3004. Eligibility for loans.**

- (a) An applicant is eligible for a loan if he or she is a senior citizen homeowner, is a resident of the District, and has resided in his or her principal place of residence for at least 3 years preceding the date of the application for assistance under this chapter. Lower income applicants shall be given priority consideration by the Mayor with respect to the issuance of loans.
- (b) To determine the eligibility of an applicant, the Mayor shall develop an application form.
- (c) In order to apply for a loan under this chapter, an applicant shall complete the application form and return it to the Mayor at the time and in the manner in which the Mayor shall prescribe.
- (d) The Mayor shall verify the contents of the application form and determine whether the applicant meets the requirements for age, residency, and principal place of residence. (Mar. 24, 1988, D.C. Law 7-96, § 5, 35 DCR 891.)

**Legislative history of Law 7-96.** — See note to § 45-3001.

### **§ 45-3005. Repayment of loans.**

- (a) For each loan issued under this chapter, the Mayor shall arrange a repayment schedule for which the repayment shall not create an economic hardship on the senior citizen homeowner receiving the loan. Loan repayment may be deferred to avoid economic hardship.
- (b) The loans granted under this chapter shall be recorded as a lien against the principal place of residence of the applicant.
- (c) If the loan is not fully repaid prior to the death of the senior citizen homeowner who accepted a loan under this chapter, the District may collect the unsatisfied amount from the decedent's estate. (Mar. 24, 1988, D.C. Law 7-96, § 6, 35 DCR 891.)

**Legislative history of Law 7-96.** — See note to § 45-3001.

### **§ 45-3006. Issuance of rules.**

Within 120 days of March 24, 1988, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 24, 1988, D.C. Law 7-96, § 7, 35 DCR 891.)

**Legislative history of Law 7-96.** — See note to § 45-3001.

### **§ 45-3007. Mayor's report to Council.**

The Mayor shall submit to the Council, not later than 6 months after the end of each fiscal year, a report on the financial condition of the fund and the results of the operation of the fund for the fiscal year. (Mar. 24, 1988, D.C. Law 7-96, § 8, 35 DCR 891.)

**Legislative history of Law 7-96.** — See note to § 45-3001.

## CHAPTER 31. HOUSING PRODUCTION TRUST FUND.

Sec.	Sec.
45-3101. Definitions.	45-3103. Coordination of housing programs for targeted populations; community outreach.
45-3102. Housing Production Trust Fund; established.	45-3104. Rules.
45-3102.1. Housing Production Trust Fund board.	

**§ 45-3101. Definitions.**

For the purposes of this chapter, the term:

(1) “Department” means the Department of Housing and Community Development.

(2) “District” means the District of Columbia.

(3) “Child development facility” means a facility where a child development program is provided for infants and children, away from home, for less than 24 hours a day for each infant or child, and which is to be located on a proposed housing or commercial project under a linked development agreement. The term “child development facility” shall include a child development center, child development home, or infant care center, but does not include a public or private elementary school engaged in legally required education and related functions.

(4) “Housing production” means the construction, rehabilitation, or preservation of decent, safe, and affordable housing.

(5) “Fund” means the Housing Production Trust Fund established pursuant to § 45-3102.

(6) “Low-income” means a total income equal to less than 50% of the Standard Metropolitan Statistical Area median as certified by the Department.

(7) “Moderate-income” means a total income equal to between 50% and 80% of the Standard Metropolitan Statistical Area median as certified by the Department.

(8) “Nonprofit housing developer” means a housing developer who qualifies as a nonprofit organization under 26 U.S.C. § 501(c)(3).

(9) “Targeted population” means low- and moderate-income families and individuals, including the elderly, the disabled, and single-parent families.

(10) “WMATA” means Washington Metropolitan Area Transit Authority. (Mar. 16, 1989, D.C. Law 7-202, § 2, 36 DCR 444.)

**Legislative history of Law 7-202.** — Law 7-202, the “Housing Production Trust Fund Act of 1988,” was introduced in Council and assigned Bill No. 7-264, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second

readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-273 and transmitted to both Houses of Congress for its review.

**§ 45-3102. Housing Production Trust Fund; established.**

(a) There is established the Housing Production Trust Fund as a permanent proprietary revolving fund of identifiable, renewable, and segregated capital,

which shall be administered by the Department to provide assistance in housing production for targeted populations.

(b) The Fund shall be used to provide:

- (1) Pre-development loans for nonprofit housing developers;
- (2) Grants for architectural designs for adaptive re-use of previously nonresidential structures;
- (3) Loans to develop housing and provide housing services for low- and moderate-income elderly persons who have special needs;
- (4) Bridge loans and gap financing to reduce up-front costs and costs of residential development and to keep a housing project in operation, if circumstances change adversely during development;
- (5) Loans for first-effort model projects;
- (6) Financing for the construction of new housing, or rehabilitation or preservation of existing housing;
- (7) Financing for site acquisition, construction loan guarantees, collateral, or operating capital;
- (8) Loans or grants to finance on-site child development facilities for proposed housing or commercial development projects; and
- (9) Other loans for housing production determined by the Department to be consistent with the purposes of this chapter.

(c) There shall be deposited in the Fund:

- (1) Fee option contributions made by commercial developers under a commercial linked development policy to be established by statute by the Council;
- (2) Community development program contributions made pursuant to §§ 26-801 through 26-810, as determined by the Superintendent of Banking and Financial Institutions in consultation with the Department;
- (3) Appropriated amounts;
- (4) Grants, fees, donations, or gifts from public and private sources;
- (5) Repayments of principal and interest on loans provided from the Fund;
- (6) Proceeds realized from the liquidation of security interests held by the District under terms of assistance provided from the Fund;
- (7) Interest earned from the deposit or investment of monies from the Fund;
- (8) All revenues, receipts, and fees of whatever source derived from the operation of the Fund;
- (9) Lease payments from loans received under the Land Acquisitions for Housing Development Opportunities Program;
- (10) Any fee or portion of an application fee that the Zoning Commission, by rule, may require an applicant for a Planned Unit Development to pay when the applicant proposes a housing production option or fee option in connection with a planned unit development application, to the extent that the Zoning Commission designates that the fee or portion of that fee shall be allocable to the Fund; and
- (11) Available community development block grants.

## (d) The Department shall:

- (1) Periodically review Fund revenue sources to determine what additional revenue sources may be required to assure the continuation of the Fund and its programs and shall request Council action to access revenue sources otherwise unavailable to the Department;
- (2) File with the Chairperson of the Committee on Housing and Economic Development quarterly reports on activities and expenditures;
- (3) Conduct annual audits, publish annual reports, hold public hearings, and make annual assessments of the continued housing needs of targeted populations;
- (4) Monitor for compliance written agreements entered into by the Department and commercial developers pursuant to this chapter;
- (5) Provide outreach and housing production counseling and technical assistance to individuals or groups interested in producing housing for targeted populations as provided in § 45-3103(b);
- (6) Encourage profit and nonprofit developers to produce housing units of 3 or more bedrooms designed to accommodate large families and to produce child development facilities in a housing development;
- (7) Give priority to nonprofit housing developers for receipt of loans from the Fund; and
- (8) Include in the rules promulgated pursuant to § 45-3104 provisions to assure that housing units produced pursuant to this chapter shall be affordable on a continuing basis for targeted populations. (Mar. 16, 1989, D.C. Law 7-202, § 3, 36 DCR 444.)

**Section references.** — This section is referred to in § 45-3101.

**Legislative history of Law 7-202.** — See note to § 45-3101.

**Cited** in Hessey v. District of Columbia Bd. of Elections & Ethics, App. D.C., 601 A.2d 3 (1991).

## § 45-3102.1. Housing Production Trust Fund board.

Any nongovernment member of a board established by the Mayor to administer or provide advice on the administration of the Housing Production Trust Fund shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia. (Mar. 16, 1989, D.C. Law 7-202, § 3a, as added Mar. 15, 1990, D.C. Law 8-88, § 2, 37 DCR 284; June 8, 1990, D.C. Law 8-133, § 2, 37 DCR 2369.)

**Legislative history of Law 7-202.** — See Note to § 45-3101.

**Legislative history of Law 8-88.** — Law 8-88, the “Housing Production Trust Fund Board Amendment Temporary Act of 1989,” was introduced in Council and assigned Bill No. 8-474. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Approved without the signature of the Mayor on January 3, 1990, it was assigned Act No. 8-139 and transmitted to both Houses of Congress for its review. D.C. Law 8-88 became effective on March 15, 1990.

**Legislative history of Law 8-133.** — Law 8-133, the “Housing Production Trust Fund Board Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-475, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Approved without the signature of the Mayor on April 2, 1990, it was assigned Act No. 8-187 and transmitted to both Houses of Congress for its review. D.C. Law 8-133 became effective on March 15, 1990.

**§ 45-3103. Coordination of housing programs for targeted populations; community outreach.**

- (a) The Department shall establish a one-stop center to:
- (1) Assist nonprofit housing developers;
  - (2) Assist housing developers and commercial developers in housing production for targeted populations; and
  - (3) Provide to potential housing developers easy and adequate access to information on housing production programs.
- (b) There is established, within the Department, the Nehemiah Community Housing Opportunity Program (“Nehemiah Program”), a pilot project to provide grants, loans, and available land to eligible nonprofit organizations in accordance with this section.
- (1) Real property shall be transferred from the District of Columbia Redevelopment Land Agency (“RLA”) to qualified nonprofit organizations (“qualified applicants”) pursuant to subsection (c) of this section.
  - (2) To be eligible, a nonprofit organization shall:
    - (A) Comply with the guidelines and procedures established by the Nehemiah Program;
    - (B) Be a neighborhood-based nonprofit organization;
    - (C) Propose to construct or substantially rehabilitate not less than 50 single family homes located in a targeted area;
    - (D) Provide for the involvement of local residents in the planning and construction of homes;
    - (E) Provide for a systematic effort of door-to-door canvassing in the immediate area where the nonprofit organization is located to offer Nehemiah Program houses to residents for homeownership;
    - (F) Accumulate or establish a plan to accumulate \$300,000 in non-District funds through membership fees, donations, or gifts;
    - (G) Propose construction methods that will reduce the cost per square foot below the average per square foot construction cost in the market area involved;
    - (H) Demonstrate market demand by utilizing the residents of the neighborhood in which the nonprofit organization is located as homebuyers of Nehemiah Program homes;
    - (I) Develop a marketing plan that includes a range of affordable prices that includes a 20% set aside for low income purchasers; and
    - (J) Provide technical assistance to the homebuyer in the areas of financial management, legal rights attendant to homeownership, and other aspects of homeownership.
  - (3) The Department shall grant a qualified applicant the exclusive right to develop land specified in the development plan submitted by the applicant.
  - (4) A qualified applicant shall be eligible for a \$1,000,000 loan, partially funded through loans from the Fund, at a below market rate set by the Department.
  - (5) Each single family home sold through the Nehemiah Program shall be sold to a person who:

(A) Is a first-time homebuyer or who has not owned a home in the previous 3 years;

(B) Will occupy the home as his or her principal place of residence for at least 5 years; and

(C) Agrees not to sell, convey, lease, or otherwise alienate the home, or place liens or encumbrances on the home, for a 5-year period commencing on the date of property settlement and ending on the 5th anniversary of the settlement date without the written approval of the Mayor. The Mayor, by rule, shall establish appropriate alienation fees to be assessed against a homeowner who alienates a home purchased pursuant to the Nehemiah Program in violation of this paragraph. Alienation fees shall not take priority over mortgage liens.

(6) Qualified purchasers of Nehemiah Program homes shall be eligible for up to \$25,000 in grants or loans, depending on the income of the purchaser and purchase price of the home.

(7) Grants shall be repaid to the Fund if the purchaser sells, conveys, leases, or otherwise alienates the home.

(c) The Department shall develop an annual community outreach plan, which shall promote maximum visibility of the Fund and its operations and full participation by District, developers, lenders, and District residents who request assistance under this chapter. (Mar. 16, 1989, D.C. Law 7-202, § 4, 36 DCR 444.)

**Section references.** — This section is referred to in § 45-3102.

**Legislative history of Law 7-202.** — See note to § 45-3101.

## **§ 45-3104. Rules.**

Rules to implement this chapter shall be promulgated by the Mayor pursuant to subchapter I of Chapter 15 of Title 1, and submitted to the Council within 90 days after March 16, 1989 for a 45-day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-202, § 5, 36 DCR 444.)

**Section references.** — This section is referred to in § 45-3102.

**Legislative history of Law 7-202.** — See note to § 45-3101.

## CHAPTER 32. REAL ESTATE APPRAISERS.

Sec.	Sec.
45-3201. Definitions.	45-3214. Temporary practice.
45-3202. Establishment of the Board of Appraisers.	45-3215. Fees.
45-3203. Terms of members; limitation; removal; officers; meetings; quorum; compensation; Executive Director.	45-3216. Basis for denial or revocation of license and certificate.
45-3204. Powers of the Board of Appraisers.	45-3217. Investigations.
45-3205. Powers and duties of the Mayor.	45-3218. Hearings.
45-3206. Licenses and certifications required; exceptions.	45-3219. Disciplinary action by the Board.
45-3207. Qualifications for licensure and certification; education; training; and experience.	45-3220. License suspension upon criminal conviction.
45-3208. Examination requirement.	45-3221. Surrender of a license or certificate.
45-3209. Licensure and certification by reciprocity or endorsement.	45-3222. Standards of practice.
45-3210. Issuance of licenses and certifications; scope.	45-3223. Retention of records.
45-3211. Term and renewal of licenses and certifications.	45-3224. Contingent fees.
45-3212. Continuing education.	45-3225. Judicial review of Board action.
45-3213. Nonresident licensure and certification.	45-3226. Practicing without a license or certificate.
	45-3227. Criminal penalties.
	45-3228. Alternative sanctions.
	45-3229. Injunctions.
	45-3230. Filing false document or evidence; false statements.
	45-3231. Representations prohibited.
	45-3232. Establishment of Fund.

### § 45-3201. Definitions.

For the purposes of this chapter, the term:

(1) "Analysis" means the act or process of providing information, recommendations, or conclusions on diversified problems in real estate other than estimating the value of real estate.

(2) "Appraisal" means the act or process of estimating the value of real estate.

(3) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of the State of Illinois.

(4) "Appraisal Qualifications Board" means the Appraisal Qualifications Board that is part of the Appraisal Foundation.

(5) "Appraisal report" means any written communication of an appraisal, review, or analysis that sets forth an opinion as to the market value of an adequately described piece of real property as of a specific date, supported by the presentation and analysis of relevant market information.

(6) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("FFIEC") established under Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, approved August 9, 1989 (103 Stat. 511; 12 U.S.C. § 3310).

(7) "Board" means the District of Columbia Board of Appraisers established by this chapter.

(8) "Certificate" means a document issued by the Mayor that evidences that the person named in the document has satisfied the qualifications and requirements for certification as a General Real Property Appraiser in the

District of Columbia (“District”) as determined by the Board and that bears a number assigned by the Board.

(9) “Certified Real Property Appraiser” or “Certificate Holder” or “General Real Property Appraiser” means an individual who:

(A) Has satisfied the qualifications and requirements of this chapter as determined by the Board; and

(B) Holds a valid certificate issued by the Mayor pursuant to this chapter and rules issued pursuant to this chapter.

(10) “Corporation Counsel” means the Corporation Counsel of the District of Columbia.

(11) “Day” means calendar day unless otherwise specified in this chapter.

(12) “Federal Financial Institutions Examination Council” means the Federal Financial Institutions Examination Council established by the Federal Financial Institutions Examination Council Act of 1978, approved November 10, 1978 (92 Stat. 3694; 12 U.S.C. § 3301 et seq.).

(13) “Federally related transaction” means any real estate-related financial transaction that:

(A) A federal financial institution regulatory agency, or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(B) Requires the services of an appraiser.

(14) “Fund” means the Appraisal Education Fund established by this chapter.

(15) “License” means a document issued by the Mayor that evidences that the person named in the document has satisfied the qualifications and requirements for a license as a Residential Real Property Appraiser in the District of Columbia as determined by the Board and that bears a number assigned by the Board.

(16) “Licensed Real Property Appraiser” or “Licensee” or “Residential Real Property Appraiser” means an individual who:

(A) Has satisfied the qualifications and requirements of this chapter as determined by the Board; and

(B) Holds a valid license issued by the Mayor pursuant to this chapter and rules issued pursuant to this chapter.

(17) “Market value” means the most probable price that a piece of real property should bring in a competitive and open market under all conditions requisite to a fair sale with the buyer and seller acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

(18) “Practice of real estate appraising” means rendering or offering to render professional services to individuals, groups, or organizations in the act or process of estimating the value of real estate.

(19) “Real estate” or “real property” means land, including the air above and ground below and any appurtenance or improvement thereto, as well as any interest, benefit, or right inherent in the ownership of land.

(20) “Real estate-related financial transaction” means any transaction that involves:

(A) The sale, lease, purchase, investment in, or exchange of real property, including an interest in real property or the financing of real property;

- (B) The refinancing of real property or an interest in real property; or
- (C) The use of real property or an interest in real property as security for a loan or investment, including mortgage-backed securities.

(21) "Residential real estate" means any parcel of real estate, improved or unimproved, that is exclusively residential in nature and any other improvement that is a typical residential improvement that supports the residential use for the location and property type. A residential unit in a condominium, townhouse, cooperative complex, or a planned unit development shall be considered residential real estate.

(22) "State" means any of the several states, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(23) "Superior Court" means the Superior Court of the District of Columbia.

(24) "Uniform Standards of Professional Appraisal Practice" means a document that contains a set of professional standards and ethics for the performance of real estate appraisals as established or amended by the Appraisal Foundation.

(25) "Valuation" means the process of estimating the market, insurable, investment, or other properly defined value of an identified interest in a specific parcel of real estate as of a given date. (Mar. 7, 1991, D.C. Law 8-219, § 2, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 2, 38 DCR 226.)

**Legislative history of Law 8-219.** — Law 8-219, the "District of Columbia Real Estate Appraiser Act of 1990," was introduced in Council and assigned Bill No. 8-634, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 8-228.** — Law 8-228, the "District of Columbia Real Estate Appraiser Temporary Act of 1990," was introduced in Council and assigned Bill No. 8-712. The Bill was adopted on first and second readings on November 13, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-311 and transmitted to both Houses of Congress for its review.

## § 45-3202. Establishment of the Board of Appraisers.

(a) There is established the District of Columbia Board of Appraisers ("Board") that shall consist of 5 members appointed by the Mayor with the advice and consent of the Council.

(b) Four of the members of the Board shall be real estate appraisers and 1 shall be a consumer member.

(c) Except as provided in subsection (e) of this section, any real estate appraiser member of the Board shall:

(1) At the time of his or her appointment and while a member of the Board, be licensed or certified and in good standing in the District as a Real Property Appraiser and be a resident of the District; and

(2) Have been licensed or certified and engaged in the practice of real estate appraising for the 3-year period immediately preceding his or her appointment.

(d) The consumer member of the Board shall:

(1) At the time of his or her appointment and while a member of the Board, be a resident of the District; and

(2) Not be, share a residence with, or be related to, an individual who is engaged in the practice of real estate appraising or who is licensed or certified or in training to become licensed or certified in real estate appraising.

(e) Of the members first appointed to the Board, each real estate appraiser member shall be a member in good standing of a nationally recognized real estate appraisal organization for a period of 5 consecutive years or have 5 years of documented experience as a real estate appraiser in the District.

(f) Except as provided in subsection (e) of this section, a member of the Board shall be appointed for a term of 3 years. (Mar. 7, 1991, D.C. Law 8-219, § 3, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 3, 38 DCR 226; Apr. 18, 1996, D.C. Law 11-110, § 50, 43 DCR 530.)

**Section references.** — This section is referred to in § 45-3203.

**Effect of amendments.** — D.C. Law 11-110 validated a previously made stylistic change in (e).

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**Legislative history of Law 11-110.** — Law

11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1995, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

### **§ 45-3203. Terms of members; limitation; removal; officers; meetings; quorum; compensation; Executive Director.**

(a) The term of a member of the Board shall be 3 years, except that, of the members first appointed 2 shall serve for 3 years, 2 shall serve for 2 years, and 1 shall serve for 1 year.

(b) Upon the expiration of a term, a member of the Board may continue to hold office until reappointed or until a successor is appointed and sworn into office.

(c) No person shall serve as a member of the Board for more than 2 consecutive full terms.

(d) A vacancy on the Board shall be filled in the same manner as the original appointment. A member appointed to fill a vacancy shall serve only until the expiration of the term or until a successor is appointed and sworn into office.

(e) The Mayor may remove a member of the Board for incompetence, misconduct, neglect of duty, or failure to maintain the qualifications set forth in § 45-3202. The failure of a member to attend at least ½ of the regularly scheduled meetings of the Board within a 12-month period shall constitute neglect of duty within the meaning of this subsection.

(f) The Mayor shall designate a chairperson from among the members. The chairperson may appoint such other officers of the Board as may be necessary and appropriate to carry out the Board’s duties and responsibilities.

(g) The Board shall determine the schedule for regular meetings and publish in the District of Columbia Register notice of regular meetings at least 1 week in advance.

(h) A majority of the members of the Board shall constitute a quorum.

(i) Members of the Board shall be entitled to receive compensation in accordance with § 1-612.8. Members shall be reimbursed for reasonable travel and other expenses incurred in the performance of their duties, as approved by the Mayor.

(j) The Mayor shall appoint an Executive Director, who shall be a full-time employee of the District, to administer and implement the orders of the Board issued in accordance with this chapter and rules issued pursuant to this chapter. (Mar. 7, 1991, D.C. Law 8-219, § 4, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 4, 38 DCR 226; Apr. 18, 1996, D.C. Law 11-110, § 50, 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 validated a previously made stylistic change in (a).

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**Legislative history of Law 11-110.** — See note to § 45-3202.

## § 45-3204. Powers of the Board of Appraisers.

(a) The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this chapter and rules issued pursuant to this chapter relating to the practice of real estate appraising;

(2) Evaluate the qualifications and credentials of an applicant for licensure or certification;

(3) Approve or disapprove an application for licensure or certification;

(4) Establish examination specifications for licensed or certified real estate appraisers, provide appropriate examinations, administer or oversee the administration of examinations, and establish the requirements for passage of the examination;

(5) Issue subpoenas, examine witnesses, and administer oaths in connection with any proceeding under this chapter;

(6) Receive and review a complaint that alleges any violation of this chapter or rules issued pursuant to this chapter;

(7) Define continuing education requirements for the renewal of licenses or certifications;

(8) Conduct hearings and maintain records and minutes necessary to carry out the Board's functions;

(9) Define by rule the type of educational experience, appraisal experience, or equivalent experience that will meet the requirements of this chapter including, but not limited to, the appraisal courses which may be credited toward the classroom hour education requirement;

(10) Hold meetings, hearings, and examinations in places and at times as the Board may designate;

(11) Establish or adopt a code of conduct and standard of practice to govern the practice of real estate appraising by licensees and certificate holders;

(12) Promote and sponsor educational seminars and programs for the benefit of individuals certified or licensed under this chapter;

(13) Request the Mayor to conduct an investigation of any alleged violation of the provisions of this chapter;

(14) Initiate disciplinary action against a person who violates the provisions of this chapter or the rules issued pursuant to this chapter;

(15) Propose to the Mayor for adoption rules to implement, administer, and enforce this chapter or any other applicable provisions of this chapter relating to standards and operation of real estate appraiser education programs;

(16) Establish policies and procedures of operation necessary to carry out Board affairs; and

(17) Establish standards to govern the approval by the Board of pre-licensure and pre-certification and continuing education courses, including standards that address subject matter, program structuring, instructional material, instructors, requirements for satisfying course completion, and other matters relevant to providing courses in a manner that best serves the public interest.

(b) The Board may study the feasibility and desirability of extending the provisions of this chapter to the appraisal of personal property.

(c) The Board may periodically study or review the standards for the development and communication of real estate appraisals provided in this chapter, and propose to the Mayor for adoption rules explaining and interpreting the standards. (Mar. 7, 1991, D.C. Law 8-219, § 5, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 5, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3205. Powers and duties of the Mayor.**

The Mayor shall have the following powers and duties:

(1) Issue any rule necessary to implement the provisions of this chapter;

(2) Provide the Board with administrative support, including staff and facilities, sufficient to enable the Board to perform its responsibilities under this chapter;

(3) Process and issue licenses and certifications approved by the Board;

(4) Provide inspection and investigative services to the Board;

(5) Provide information to the public concerning the requirements for licensure and certification, application procedures, standards for the practice of real estate appraising, qualifications, and examination requirements;

(6) Maintain central files or records that pertain to licensure, certification, inspections, and investigations, or other matters requested by the Board;

(7) Maintain a roster of individuals approved by the Board for licenses or certifications and transmit the roster to the Appraisal Subcommittee annually; and

(8) Collect from each licensee or certificate holder an annual registration fee, in the amount determined by the FFIEC, and transmit the fees to the FFIEC annually. (Mar. 7, 1991, D.C. Law 8-219, § 6, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 6, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3206. Licenses and certifications required; exceptions.**

(a) Except as provided in this chapter, on or after July 1, 1991, it shall be unlawful for any person in the District to practice real estate appraising, engage in the practice of providing real estate appraisal services, or hold himself or herself out as practicing real estate appraising in the District unless the person has been approved by the Board and issued a license or certification pursuant to the provisions of this chapter and rules issued pursuant to this chapter.

(b) A license or certification shall not be issued under the provisions of this chapter to a partnership, association, corporation, firm or group, nor shall the term "Certified Real Estate Appraiser" or any similar term be used following or immediately in connection with the name of a partnership, association, corporation, or other firm or group in a manner that might create the impression of licensure or certification by the District as a real estate appraiser. Nothing in this chapter shall preclude a person licensed or certified under the provisions of this chapter from rendering an appraisal for or on behalf of a partnership, association, corporation, or other firm or group if the appraisal report is prepared by, or under the direct supervision of, and signed by a person who is licensed or certified under the provisions of this chapter.

(c) Any person who is not licensed or certified under this chapter may assist a licensed or certified real estate appraiser in the performance of an appraisal if the person is directly supervised by the licensed or certified real estate appraiser and any appraisal report rendered in connection with the appraisal is reviewed and signed by the licensed or certified real estate appraiser.

(d) This chapter shall not apply to a real estate broker or salesperson licensed by the District who, in the ordinary course of business, gives an opinion to a potential seller, buyer, or third party regarding the recommended listing or purchase price of real estate if the opinion is not referred to as an appraisal and no opinion is rendered regarding the market value of the real estate.

(e) This chapter shall not apply to an assessor employed by the District government to perform assessments of real estate for ad valorem tax purposes.

(f) Any person who desires to practice real estate appraising in the District shall apply in writing on a form prescribed by the Board and remit payment of any fees fixed by rule by the Mayor.

(g) There shall be 2 classifications of real estate appraisers in the District:

(1)(A) The Residential Real Property Appraiser classification shall consist of any person who has:

(i) Satisfied the requirements for a license under this chapter and rules issued pursuant to this chapter; and

(ii) Been approved by the Board.

(B) A Residential Real Property Appraiser may appraise residential real property that consists of 4 or less residential units; and

(2)(A) The General Real Property Appraiser classification shall consist of any person who has:

(i) Satisfied the requirements for certification under this chapter and rules issued pursuant to this chapter; and

(ii) Been approved by the Board.

(B) The General Real Property Appraiser shall be permitted to appraise any type of real property including, but not limited to, commercial, residential, industrial, and special purpose real property. (Mar. 7, 1991, D.C. Law 8-219, § 7, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 7, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201. **Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3207. Qualifications for licensure and certification; education; training; and experience.**

(a) An individual who applies for a license to practice as a Residential Real Property Appraiser shall demonstrate to the satisfaction of the Board that he or she possesses the knowledge and competence necessary to perform residential real estate appraisals by having satisfactorily completed at least 75 hours of classroom instruction in recognized or approved subjects related to residential real estate appraisals, including subjects covering the Uniform Standards of Professional Appraisal Practice, from a real estate appraisal or real estate related organization, college or university, state or federal agency, or proprietary school recognized by the Appraisal Foundation or the Board.

(b) An individual who applies for a certificate to practice as a General Real Property Appraiser shall demonstrate to the satisfaction of the Board that he or she possesses the knowledge and competence necessary to perform all types of real estate appraisals by having satisfactorily completed at least 165 hours of classroom instruction in recognized or approved subjects related to real estate appraisals, including subjects covering the Uniform Standards of Professional Appraisal Practice, from a real estate appraisal or real estate related organization, college or university, state or federal agency, or proprietary school recognized by the Appraisal Foundation or the Board.

(c) In addition to the provisions of subsections (a) and (b) of this section, an applicant for a license or certificate to practice as a Residential Real Property Appraiser or General Real Property Appraiser shall submit to the Board satisfactory evidence, as defined by rule, of at least 2 years of full-time experience in real estate appraising supported by written reports or file memoranda, and satisfactory evidence of additional qualifications as may be

required by the Appraisal Subcommittee to render appraisers licensed or certified under the provisions of this chapter eligible to perform appraisals in connection with federally related transactions. (Mar. 7, 1991, D.C. Law 8-219, § 8, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 8, 38 DCR 226.)

**Section references.** — This section is referred to in § 45-3208.

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3208. Examination requirement.

In addition to the qualifications and requirements of § 45-3207, an applicant for licensure or certification shall be required to take and pass a written examination. The written examination shall test the applicant's competence and proficiency in the following:

(1) Knowledge of technical terms commonly used in or related to real estate appraising, appraisal report-writing, and economic concepts applicable to real estate;

(2) Understanding of principles of land economics, real estate appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing data used to conduct an appraisal;

(3) Understanding of the Uniform Standards of Professional Appraisal Practice as adopted by the Board;

(4) Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for the appraiser classification for which application is made;

(5) Knowledge of other principles and procedures as may be appropriate for the appraiser classification for which application is made;

(6) Basic understanding of real estate law; and

(7) Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a person who is licensed or certified, as set forth in this chapter. (Mar. 7, 1991, D.C. Law 8-219, § 9, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 9, 38 DCR 226.)

**Section references.** — This section is referred to in § 45-3209.

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3209. Licensure and certification by reciprocity or endorsement.

(a) The Board, in its discretion, may issue a license or certificate by reciprocity to an applicant who:

(1) Is licensed or certified and in good standing under the laws of another state if the state has standards which, in the opinion of the Board, are substantially equivalent to the requirements of this chapter and if the state admits real estate appraisers licensed or certified in the District in a like manner; and

- (2) Pays the applicable fees established by the Mayor.
- (b) The Board, in its discretion, may issue a license or certificate by endorsement to an applicant who:
- (1) Is currently licensed or certified and is in good standing under the laws of another state if the state has examination requirements which, in the opinion of the Board, were substantially equivalent at the time of licensure or certification to the requirements of this chapter;
- (2) Meets all requirements for licensure or certification under this chapter except the examination requirements of § 45-3208; and
- (3) Pays the applicable fees established by the Mayor. (Mar. 7, 1991, D.C. Law 8-219, § 10, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 10, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3210. Issuance of licenses and certifications; scope.**

- (a) The Mayor shall issue a license or certificate to an applicant approved by the Board who meets the requirements of this chapter and rules issued pursuant to this chapter, to practice real estate appraising in the District. The Board may adopt for the exclusive use of persons licensed or certified under the provisions of this chapter, a seal, symbol, or other mark identifying the user as a licensed or certified real estate appraiser.
- (b) A person who is licensed or certified under the provisions of this chapter and rules issued pursuant to this chapter is authorized to perform only those real estate appraisal assignments that are within the scope of his or her appraiser classification. (Mar. 7, 1991, D.C. Law 8-219, § 11, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 11, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3211. Term and renewal of licenses and certifications.**

- (a) The term of a license or certificate issued under this chapter may not be greater than 3 years from the date of issuance, as established by rule. The expiration date shall appear on the face of a license or certificate.
- (b) As a condition of renewal of a license or certificate, a licensee or certificate holder shall satisfy the requisite continuing education requirement.
- (c) If a licensee or certificate holder fails to renew the license or certificate prior to its expiration, the person may renew the license or certificate under terms and conditions as prescribed by the Board. (Mar. 7, 1991, D.C. Law 8-219, § 12, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 12, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3212. Continuing education.

(a) Prior to renewal of a license or certificate, a licensee or certificate holder shall present evidence satisfactory to the Board of having met the continuing education requirement.

(b) The continuing education requirement for renewal of a license or certificate shall be established by rule and shall not exceed 60 classroom hours of instruction in courses or seminars approved by the Board. A licensee or certificate holder shall complete the continuing education requirement during the immediately preceding term of his or her license or certificate before the license or certificate may be renewed.

(c) The Board shall recommend for adoption rules implementing the provisions of this section to assure that a person who renews his or her license or certificate has current knowledge of real estate appraisal theories, practices, and techniques that will provide a high degree of service and protection to the public. The rules shall include, but not be limited to, the following:

(1) Policies and procedures for obtaining Board approval of courses of instruction;

(2) Standards, policies, and procedures to be applied by the Board in evaluating a claim of equivalency by a licensee or certificate holder; and

(3) Standards, monitoring methods, and systems for recording attendance to be employed by course sponsors.

(d) The Mayor may, by rule, impose a nonrefundable fee chargeable to a sponsor of a continuing education program to cover the administrative costs of approving the education program, except that no fee shall be charged for the approval of a continuing education course or program offered by the University of the District of Columbia or other instrumentality of the District government. (Mar. 7, 1991, D.C. Law 8-219, § 13, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 13, 38 DCR 226.)

**Section references.** — This section is referred to in § 45-3228.

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3213. Nonresident licensure and certification.

An applicant for licensure or certification under this chapter who is not a resident of the District shall submit with the application an irrevocable consent that service of process in any action against the applicant arising out of the applicant's activities as a licensed or certified real estate appraiser may be made by delivery of the process to the Executive Director of the Board if the person bringing the action cannot, in the exercise of due diligence, effect personal service upon the applicant. (Mar. 7, 1991, D.C. Law 8-219, § 14, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 14, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3214. Temporary practice.**

- (a) The Board, upon application, shall issue a temporary permit to practice real estate appraising in the District to a person if the:
- (1) Person is licensed or certified and in good standing in another state;
  - (2) Property to be appraised is part of a federally-related transaction and is located in the District;
  - (3) Appraisal assignment is of a temporary nature that can be concluded in a limited period of time; and
  - (4) Person registers with the Board and pays the applicable fee.

(b) If a temporary permit to practice is issued by the Board, the temporary permit may be extended for an additional term as the Board, by rule, may prescribe, except that the sum total of the initial term and extended term of the temporary permit shall not exceed 6 months. (Mar. 7, 1991, D.C. Law 8-219, § 15, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 15, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201. **Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3215. Fees.**

(a) The Mayor may establish the fee required for licensure or certification, and establish other fees and charges for services rendered by the Board or the District government in connection with this chapter, in an amount the Mayor deems reasonably necessary to defray the appropriate cost of administering this chapter or rendering the required services.

(b) An appropriate fee for original or renewal applications, examinations, temporary practice requests, or pre-certification or continuing education program approval requests shall accompany an application or other request for Board action on forms approved by the Board. (Mar. 7, 1991, D.C. Law 8-219, § 16, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 16, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201. **Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3216. Basis for denial or revocation of license and certificate.**

In accordance with the provisions of this chapter and rules issued pursuant to this chapter, the Board may deny or revoke the issuance of a license or certificate to an applicant who:

- (1) Fails to meet the qualifications established by this chapter or rules issued pursuant to this chapter;
- (2) Fraudulently or deceptively obtains or attempts to obtain a license or certificate;
- (3) Has been disciplined by a licensing or disciplinary authority;
- (4) Has been convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed or certified;

(5) Willfully makes or files a false report or record during an appraisal assignment during the 5-year period immediately preceding the date of application; or

(6) Acted or held oneself out as licensed or certified under this chapter when not licensed or certified. (Mar. 7, 1991, D.C. Law 8-219, § 17, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 17, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3217. Investigations.

The Mayor, on his or her own initiative or at the request of the Board, may investigate the actions of any person who is licensed or certified under this chapter, or any other person who holds himself or herself out as licensed or certified. (Mar. 7, 1991, D.C. Law 8-219, § 18, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 18, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3218. Hearings.

(a) Before the Board denies an applicant a license or certificate or takes any of the disciplinary actions enumerated in § 45-3219 against a licensee or certificate holder, the Board shall give the licensee or certificate holder an opportunity for a hearing before the Board.

(b) Unless this chapter specifically provides otherwise, the Board shall give notice and hold the hearing in accordance with § 1-1509.

(c) The notice to be given to an individual shall be sent by certified mail to the last known address of the individual at least 20 days before the hearing.

(d) The individual may be represented at the hearing by counsel.

(e) The Board shall require the attendance of witnesses and the production of books, papers, and other evidence reasonably requested by the person against whom an action is contemplated.

(f) In case of contumacy by or refusal to obey a subpoena issued by the Board to any person, the Board may refer the matter to the Superior Court of the District of Columbia, which may by order require the person to appear and give testimony or produce books, papers, or other evidence bearing on the hearing.

(g) If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, the Board may nevertheless hear and determine the matter. (Mar. 7, 1991, D.C. Law 8-219, § 19, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 19, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3219. Disciplinary action by the Board.**

(a) Following a hearing against a person permitted to practice by this chapter, the Board, upon a determination that a licensee or certificate holder has committed any of the acts enumerated in subsection (b) of this section, may:

- (1) Revoke or suspend the license or certificate of any person;
- (2) Revoke or suspend the privilege to practice in the District of any person permitted by this chapter to practice;
- (3) Reprimand any person permitted to practice by this chapter;
- (4) Impose a civil fine not to exceed \$5,000 for each violation of this chapter or rule issued pursuant to this chapter;
- (5) Require a period of probation; or
- (6) Require a course of remediation that may include reexamination, retraining, or other means approved by the Board.

(b) The Board may take any disciplinary action enumerated in subsection (a) of this section against a licensee or certificate holder if, following a hearing, the Board finds that the person:

- (1) Procured a license or certificate issued pursuant to this chapter by making a false or fraudulent representation;
- (2) Made any wilful or negligent misrepresentation or any wilful or negligent omission of material fact;
- (3) Accepted an appraisal assignment when the employment is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion, or when the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached, or upon consequences resulting from the appraisal assignment;
- (4) Failed to actively and personally supervise any person that is not licensed or certified under this chapter who assists the licensed or certified real estate appraiser in performing real estate appraisals;
- (5) Failed to retain for 3 years or to make available to the Board for its inspection, originals or true copies of any written contract engaging his or her services to appraise real property, and any appraisal report or supporting data assembled or formulated by the appraiser in preparing the report;
- (6) Paid a fee or valuable consideration to any person for an act or service performed in violation of this chapter or rules issued pursuant to this chapter;
- (7) Violated the Uniform Standards of Professional Appraisal Practice in developing, preparing, or communicating a real estate appraisal or any other rule issued pursuant to this chapter concerning standards of conduct;
- (8) Performed any other act that constitutes improper, fraudulent, or dishonest conduct or demonstrates a lack of good moral character in the opinion of the Board;
- (9) Was convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed or certified under this chapter;
- (10) Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(11) Was negligent in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(12) Violated the confidential nature of governmental records to which he or she gained access through employment or engagement as a real estate appraiser by a governmental agency;

(13) Wilfully disregarded or violated any of the provisions of this chapter or rules issued pursuant to this chapter; or

(14) Violated any order of the Board.

(c) Nothing in this section shall preclude prosecution for a criminal violation of this chapter regardless of whether the same violation has been or is the subject of a disciplinary action enumerated in this section. Criminal prosecution may proceed prior to, simultaneously with, or subsequent to an administrative enforcement action. (Mar. 7, 1991, D.C. Law 8-219, § 20, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 20, 38 DCR 226.)

**Section references.** — This section is referred to in § 45-3218.

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3220. License suspension upon criminal conviction.

The Mayor shall immediately suspend the license or certificate of any person who is convicted in a court of competent jurisdiction in the District or any state or territory of the United States or federal court of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, criminal conspiracy to defraud, or similar offense or offenses, or forfeits collateral or pleads guilty or nolo contendere to any larceny offense. The Mayor shall convene a revocation hearing within thirty (30) days of the suspension. (Mar. 7, 1991, D.C. Law 8-219, § 21, 38 DCR 171.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

## § 45-3221. Surrender of a license or certificate.

(a) If a person who is licensed or certified under this chapter is accused of any act, omission, or misconduct that would subject him or her to disciplinary action, the person, with the consent and approval of the Board, may surrender his or her license or certificate and all rights and privileges pertaining to the license or certificate for a period of time established by the Board.

(b) A person who surrenders his or her license or certificate shall not be eligible for or submit any application for licensure or certification as a real estate appraiser during the period that the license or certificate is surrendered.

(c) The voluntary surrender of a license or certificate shall not preclude the imposition of civil or criminal penalties against the person who surrenders the license or certificate. (Mar. 7, 1991, D.C. Law 8-219, § 22, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 21, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3222. Standards of practice.**

A licensed or certified real estate appraiser shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, and any other standard or requirement of the Board, issued by rule pursuant to this chapter. (Mar. 7, 1991, D.C. Law 8-219, § 23, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 22, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3223. Retention of records.**

(a) Any person licensed or certified under this chapter shall retain for 3 years, an original or true copy of any written contract engaging his or her services for real property appraisal work and any appraisal report and supporting data assembled and formulated by the appraiser in preparing the report.

(b) The 3-year period for retention shall be applicable to each engagement of the services of the appraiser and shall commence upon the date of the submittal of the appraisal to the client unless, within the 3-year period, the appraiser is notified that the appraisal is involved in litigation, in which event the 3-year period shall commence upon the date of the final disposition of the litigation.

(c) Any records maintained under the provisions of this section shall be made available to the Board for inspection and copying on reasonable notice to the licensee or certificate holder. (Mar. 7, 1991, D.C. Law 8-219, § 24, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 23, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**§ 45-3224. Contingent fees.**

A licensed or certified real property appraiser may not accept a fee for an appraisal assignment that is contingent upon the real property appraiser reporting a predetermined estimate, analysis, or opinion, or is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences that result from the appraisal assignment. (Mar. 7, 1991, D.C. Law 8-219, § 25, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 24, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3225. Judicial review of Board action.

Any person aggrieved by a final decision of the Board or the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to § 1-1510. (Mar. 7, 1991, D.C. Law 8-219, § 26, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 25, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3226. Practicing without a license or certificate.

(a) No person shall practice, attempt to practice, or offer to practice real estate appraising in the District unless currently licensed or certified, or exempt from licensure or certification, under this chapter.

(b) Unless authorized to practice under this chapter, a person shall not represent to the public by title, description of services, methods, procedures, or otherwise that the person is authorized to practice real estate appraising in the District. (Mar. 7, 1991, D.C. Law 8-219, § 27, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 26, 38 DCR 226.)

**Section references.** — This section is referred to in § 45-3228.

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3227. Criminal penalties.

(a) Any person who violates any provision of this chapter may be imprisoned for not more than 1 year, fined not more than \$10,000, or both.

(b) Any person who has been previously convicted under this chapter may be imprisoned for not more than 5 years, fined not more than \$20,000, or both. (Mar. 7, 1991, D.C. Law 8-219, § 28, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 27, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## § 45-3228. Alternative sanctions.

(a) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules issued under the authority of this chapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction issued pursuant to the Civil Infractions Act shall be pursuant to Chapter 27 of Title 6.

(b) For purposes of the Civil Infractions Act and the implementing rules, a violation of § 45-3226 shall be a class 2 infraction, and a violation of § 45-3212 shall be a class 3 infraction. (Mar. 7, 1991, D.C. Law 8-219, § 29, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 28, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**References in text.** — The “Civil Infringements Act” referred to in this section is D.C. Law 6-42.

## **§ 45-3229. Injunctions.**

(a) The Corporation Counsel may bring an action in the Superior Court of the District of Columbia in the name of the District to enjoin the unlawful practice of real property appraising or any other action that is grounds for the imposition of a criminal penalty or disciplinary action under this chapter.

(b) Any remedy under this section shall be in addition to criminal prosecution or any disciplinary action by the Board.

(c) In any proceeding under this section, it shall not be necessary to prove that any person is individually injured by the action or actions alleged. (Mar. 7, 1991, D.C. Law 8-219, § 30, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 29, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3230. Filing false document or evidence; false statements.**

(a) No person shall file or attempt to file with the Board or the Mayor any statement, diploma, certificate, credential, or other evidence if the person knows or should know, that the statement, diploma, certificate, credential, or other evidence is false or misleading.

(b) No person shall knowingly make a false statement of a material fact under oath or affirmation administered by any board or hearing officer. (Mar. 7, 1991, D.C. Law 8-219, § 31, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 30, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

## **§ 45-3231. Representations prohibited.**

(a) Beginning July 1, 1991, it shall be unlawful for any person in the District to directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified real estate appraiser or use any title, designation, or abbreviation likely to create the impression of licensure or certification by the District as a real property appraiser for compensation within the District without first obtaining a license or certificate as provided in this chapter.

(b) Any person certified as a real estate appraiser by an appraisal trade organization shall retain the right to use the term “certified” or any similar term in identifying himself or herself to the public, provided that in each instance that the term is used, the name of the certifying organization or body is prominently and conspicuously displayed immediately adjacent to the term

and that the use of the term does not create the impression of licensure or certification by the District.

(c) Nothing in this chapter shall abridge, infringe upon, or otherwise restrict the right to use the term "certified assessor" or any similar term by any person certified by the District of Columbia Department of Finance and Revenue to perform ad valorem tax appraisal, provided that the term is not used in a manner that creates the impression of licensure or certification by the District to perform real estate appraisals other than for ad valorem tax purposes.

(d) No license or certificate shall be issued under the provisions of this chapter to a partnership, association, corporation, firm, or group, nor shall the term "certified real estate appraiser" or any similar term be used following or immediately in connection with the name of a partnership, association, corporation, or other firm or group or in a manner that might create the impression of licensure or certification by the District as a real estate appraiser. Nothing in this chapter shall be construed to preclude a licensed or certified real estate appraiser from rendering an appraisal for or on behalf of a partnership, association, corporation, firm, or group, provided that the appraisal report is prepared by, or under the immediate personal direction of the licensed or certified real estate appraiser.

(e) Any person who is not licensed or certified under this chapter may assist a licensed or certified real estate appraiser in the performance of an appraisal, if he or she is actively and personally supervised by the licensed or certified real estate appraiser and that any appraisal report rendered in connection with the appraisal is reviewed and signed by the licensed or certified real estate appraiser.

(f) It shall be unlawful for any person who performs an appraisal of real estate located in the District to describe or refer to the appraisal by the term "certified" or any similar term unless the person has first been licensed or certified by the Board under the provisions of this chapter. Nothing in this chapter shall require a licensed or certified real estate appraiser to render a "certified" real estate appraisal when performing an appraisal assignment. If a licensed or certified real estate appraiser performs a real estate appraisal that is not represented as being "certified", the appraiser shall clearly inform the person to whom the appraisal report is given and prominently disclose on the appraisal report that the appraisal is not a "certified" real estate appraisal.

(g) This chapter shall not apply to a real estate broker or salesperson who, in the ordinary course of business, gives an opinion of the price of real estate for the purpose of a prospective listing or sale, if the opinion of the price does not refer to or cannot be construed as an appraisal. (Mar. 7, 1991, D.C. Law 8-219, § 32, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 31, 38 DCR 226; Apr. 18, 1996, D.C. Law 11-110, § 50, 43 DCR 530.)

**Effect of amendments.** — D.C. Law 11-110 validated a previously made stylistic change in (f).

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

**Legislative history of Law 11-110.** — See note to § 45-3202.

**§ 45-3232. Establishment of Fund.**

(a) There is established an Appraisal Education Fund (“Fund”). The Board may use the monies deposited in the Fund for the purposes of raising the standards of practice and the competency of licensees and certificate holders by:

(1) Promoting the advancement of education and research for the benefit of any person issued a license or certificate under this chapter;

(2) Underwriting educational seminars, workshops, and any other similar form of educational project for the benefit of any person issued a license or certificate under this chapter; and

(3) Contracting for particular education or research projects to further the purposes of this chapter.

(b) No amount shall be obligated or expended from the Fund unless authorized in accordance with § 47-304.

(c) Any person issued or renewing a license and certificate under this chapter shall pay, in addition to licensing and renewal fees established by the Mayor, a sum to be established by the Mayor for deposit into the Fund.

(d) Any civil penalties imposed by the Board pursuant to this chapter shall be deposited in the Fund.

(e) The Mayor may, by rule, establish minimum and maximum balances for the Fund, procedures for continuing and discontinuing assessing licensees and certificate holders, and other provisions relevant to the operation of the Fund.

(f) If a licensee or certificate holder fails to pay the amount assessed by the Mayor within the time prescribed by rule, his or her license or certificate shall be automatically suspended. The Board shall send a notice of the suspension, by certified mail, to the address of record within 5 days after the suspension. The license or certificate shall be restored only upon the actual receipt by the Mayor of the delinquent assessment. (Mar. 7, 1991, D.C. Law 8-219, § 33, 38 DCR 171; Mar. 7, 1991, D.C. Law 8-228, § 32, 38 DCR 226.)

**Legislative history of Law 8-219.** — See note to § 45-3201.

**Legislative history of Law 8-228.** — See note to § 45-3201.

# **TITLE 46. SOCIAL SECURITY.**

## **Chapter**

1. Unemployment Compensation.....	§§ 46-101 to 46-128.
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## **CHAPTER 1. UNEMPLOYMENT COMPENSATION.**

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## **§ 46-101. Definitions.**

As used in this chapter, unless the context indicates otherwise:

(1) The term "employer" means every individual and type of organization for whom services are performed in employment.

(2)(A) "Employment" means:

(i) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:

(I) Any officer of a corporation; or

(II) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(III) Any individual other than an individual who is an employee under sub subparagraph (i)(I) or (i)(II) of this subparagraph who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

b. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on

behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of sub subparagraph (i)(III) of this subparagraph, the term "employment" shall include services described in a. and b. above performed after December 31, 1971, only if:

1. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

2. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

3. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(ii)(I) Service performed after December 31, 1971, by an individual in the employ of the District or any of its instrumentalities (or in the employ of the District and 1 or more states or their instrumentalities) for a hospital or institution of higher education; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) solely by reason of § 3306(c)(7) of that Act (26 U.S.C. § 3306(c)(7)) and is not excluded from "employment" under paragraph (2)(A)(iv) of this section;

(II) Service performed after December 31, 1977, in the employ of the District or any of its instrumentalities, or in any instrumentality of the District and 1 or more states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) by § 3306(c)(7) (26 U.S.C. § 3306(c)(7)) of that Act and is not excluded from "employment" under paragraph (2)(A)(iv) of this section.

(iii) Service performed after March 30, 1962, by an individual in the employ of an educational organization, and service performed after December 31, 1971, by an individual in the employ of a religious, charitable, or other organization which is excluded from the term "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) solely by reason of § 3306(c)(8) of that Act (26 U.S.C. § 3306(c)(8)), except as provided in paragraph (2)(A)(iv);

(iv) For the purposes of sub subparagraphs (ii) and (iii) of this subparagraph the term "employment" does not apply to service performed after December 31, 1971:

(I) In the employ of:

a. A church or convention or association of churches; or

b. An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(II) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(III) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(IV) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(V) Prior to January 1, 1978, for a hospital in a prison or other correctional institution of the District by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(v) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and except in the Virgin Islands until and including December 31st of the year in which the Secretary of Labor approves for the first time an unemployment insurance law of the Virgin Islands submitted to him for approval) after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (2)(B) of this section or the parallel provisions of another state's law), if:

(I) The employer's principal place of business in the United States is located in the District; or

(II) The employer has no place of business in the United States; but

a. The employer is an individual who is a resident of the District; or

b. The employer is a corporation which is organized under the laws of the District or the laws of the United States; or

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of the District is greater than the number who are residents of any one other state; or

(III) None of the criteria of sub-sub-subparagraphs (I) and (II) of this sub-subparagraph are met but the employer has elected coverage in the District or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of the District.

(IV) An "American employer", for purposes of this sub-subparagraph, means a person who is:

a. An individual who is a resident of the United States; or  
b. A partnership, if two-thirds or more of the partners are residents of the United States; or

c. A trust, if all of the trustees are residents of the United States; or

d. A corporation organized under the laws of the United States or of any state.

(V) As used in this sub-subparagraph the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands as provided in paragraph (2)(A)(v) of this section.

(vi) The term "employment" shall include personal or domestic service in a private home for an employer who paid cash remuneration of \$500 or more in any calendar quarter. "Personal or domestic service" for the purpose of this sub-subparagraph shall include all persons employed by an employer in his capacity as a householder, as distinguished from a person employed by the employer in the pursuit of a trade, occupation, profession, enterprise, or vocation. After December 31, 1977, the term "employment" shall also include personal and domestic service in a local college club or a college fraternity or sorority for an employer who paid cash remuneration of \$500 or more in any calendar quarter in the current or preceding calendar year to individuals employed in such domestic service.

(B)(i) The term "employment" shall include an individual's entire service, performed within, both within and without or entirely without the District if:

(I) The service is localized in the District; or

(II) The service is not localized in any state but some of the service is performed in the District and:

a. The individual's base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in the District; or

b. The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in the District;

(III) The service is performed anywhere within the United States, the Virgin Islands, or Canada; provided, that:

a. Such service is not covered under the unemployment compensation law of any state, the Virgin Islands, or Canada; and

b. The place from which the service is directed or controlled is in the District.

(ii) Service shall be deemed to be localized within a state if:

(I) The service is performed entirely within such state; or

(II) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(C) Services covered by an arrangement pursuant to § 46-117 between the Director and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employer are deemed to be performed entirely within the District, shall be deemed to be employment if the Director has approved an election of the employer for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment for an employer.

(D) Notwithstanding any other provisions of this subsection, the term "employment" shall also include all service performed after January 1, 1955, by

an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft; provided, that the operating office from which the operations of such vessel or aircraft are ordinarily and regularly supervised, managed, directed, and controlled, is within the District.

(E) The term "employment" shall not include:

(i) Service performed by an individual under 18 years of age as a babysitter;

(ii) Casual labor not in the course of the employer's trade or business;

(iii) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(iv) Service performed in the employ of the United States government or of an instrumentality of the United States which is:

(I) Wholly owned by the United States; or

(II) Exempt from the tax imposed by § 1600 of the Internal Revenue Code of the United States (Title 26, U.S.C.) or by virtue of any other provision of law; provided, that, in the event that the Congress of the United States, on or before the date of the enactment of the chapter, has permitted or in the event that the Congress of the United States shall permit states to require any instrumentalities of the United States to make contributions to an unemployment fund under a state unemployment compensation law, then, to the extent so permitted by Congress, and from and after the date as of which such permission becomes effective, or January 1, 1940, whichever is the later, all of the provisions of this chapter shall be applicable to such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employees, individuals, and services; provided further, that if the District of Columbia should not be certified by the Federal Security Agency under § 1603 of the Internal Revenue Code (Title 26, U.S.C.) for any year, the payments required of any instrumentality of the United States or its employees with respect to such year shall be refunded by the Director in accordance with the provisions of § 46-105(i); provided, however, that any employer required to make retroactive payment of any contributions shall be given 30 days from October 17, 1940, within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence 1 month from October 17, 1940;

(v) Service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(vi) Service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an act of Congress;

(vii) Service performed in any calendar quarter in the employ of any organization exempt from income tax under § 101 of the Internal Revenue Code of the United States (Title 26, U.S.C.), if:

(I) The remuneration for such service does not exceed \$50; or

(II) Such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(viii) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(ix) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(I) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(II) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(x) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to state law;

(xi) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(xii) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(xiii) Service covered by an arrangement between the Director and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by such employer's duly approved election are deemed to be performed entirely within such agency's state;

(xiv) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if he performed service on and in connection with such vessel or aircraft when outside the United States;

(xv) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except:

(I) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and

(II) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(xvi) Service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters;

(xvii) Service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. §§ 288 to 288f-3).

(F) If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual in employment for the person employing him, where any of such service is excepted by paragraph (2)(E)(vi) of this section.

(G) Notwithstanding any of the provisions of paragraph (2)(E) of this section, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) is required to be covered under this chapter.

(H)(i) Any localized service performed for an employing unit, which is excluded under the definition of employment in paragraph (2) of this section and with respect to which no payments are required under the employment security law of another state or of the federal government may be deemed to constitute employment for all purposes of this chapter; provided, that the Director has approved a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in such approval. No election shall be approved by the Director unless it:

(I) Includes all the service of the type specified in each establishment or place of business for which the election is made; and

(II) Is made for not less than 2 calendar years.

(ii) Any service which, because of an election by an employing unit under paragraph (2)(H)(i) of this section, is employment subject to this chapter shall cease to be employment subject to the chapter as of January first of any calendar year subsequent to the 2 calendar years of the election, only if not later than March 15th of such year, either such employing unit has filed with the Director a written notice to that effect, or the Director on his own motion has given notice of termination of such coverage.

(3) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any

medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the Council of the District of Columbia, except that such term "wages" shall not include:

(A) The amount of any payment with respect to services performed on and after the effective date of this chapter, made to, or on behalf of, an individual in its employ under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

- (i) Retirement; or
- (ii) Sickness or accident disability; or
- (iii) Medical and hospitalization, expenses in connection with sickness or accident disability; or
- (iv) Death, provided such individual:

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer; and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(B) The payment by an employer (without deduction from the remuneration of the individual in employment) of the tax imposed upon an individual in its employ under § 1400 of the Internal Revenue Code (Title 26, U.S.C.); or

(C) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services which were not employment as defined in paragraph (2)(A) of this section and were not services covered pursuant to paragraph (2)(H) of this section at any time during the 1-year period ending December 31, 1975, and which were newly covered services as mandated by the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566; 90 Stat. 2667), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567; 88 Stat. 1850), was paid on the basis of such services.

(4) "Earnings" means all remuneration payable for personal services, including wages, commissions, and bonuses, and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. After August 29, 1946, back pay awarded under any statute of the District or of the United States shall be treated as earnings. Gratuities received by an individual in the course of his

work shall be treated as earnings. The reasonable cash value of any remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board.

(5) An individual shall be deemed "unemployed" with respect to any week during which he performs no service and with respect to which no earnings are payable to him or with respect to any week of less than full-time work if 80% of the earnings payable to him with respect to such week are less than his weekly benefit amount plus \$20.

(6) "Base period" means the first 4 out of the last 5 completed calendar quarters immediately preceding the first day of the individual's benefit year.

(7) The term "benefits" means the money payments to an individual, as provided in this chapter, with respect to his unemployment including any dependent's allowance paid under the provisions of § 46-109.

(8) "Benefit year" with respect to any individual means the 52-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the 52-consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with § 46-112 shall be deemed to be "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers as required by the provisions of § 46-108.

(9) The term "computation date" means the 30th day of June of each year as of which rates of contributions are determined for the next following calendar year, except that the first computation date under the provisions of this chapter shall be the last day of the third calendar quarter immediately preceding the effective date of this chapter, as of which rates of contribution, commencing with the effective date of this chapter, are determined for the remainder of that calendar year.

(10) The term "Board" means the District of Columbia Unemployment Compensation Board established by § 46-116.

(11) "Calendar quarter" means the period of 3 consecutive months ending on March 31st, June 30th, September 30th, or December 31st, or the equivalent thereof as the Council of the District of Columbia may by regulation prescribe.

(12) The term "District" means the District of Columbia.

(13) "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency or any agency of a foreign government charged with the administration of an unemployment insurance program or free public employment offices.

(14) The term "month" means calendar month; except as the Council of the District of Columbia may otherwise prescribe.

(15) The term "week" means the calendar week or such period of 7 consecutive days as the Council of the District of Columbia may by regulation prescribe.

(16) "Fund" means the District Unemployment Fund established by § 46-102, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia (herein referred to as the "District"), the Commonwealth of Puerto Rico, and the Virgin Islands.

(18) "Employing unit" means any individual or type of organization, including the District government and its instrumentalities (as specified in paragraph (2)(A)(ii) of this section, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had, in its employ 1 or more individuals performing services for it within the District.

(19) The phrase "dependent relative" means a spouse, mother, father, stepmother, stepfather, brother, or sister, who, because of age or physical disability, is unable to work, or a child under 16 years of age, or a child who is unable to work because of physical disability, who is wholly or mainly supported by the individual receiving the benefit. For the purposes of this paragraph the term "child" shall mean any son, daughter, stepson, or step-daughter, regardless of age, whom the claimant is morally obligated to support.

(20) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for 1 or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(21) The term "principal base period employer" means the employer that paid a claimant the greatest amount of wages used in the computation of his claim. In the event 2 or more employers paid the claimant identical amounts, the employer in such group for whom the claimant most recently worked shall be the principal base period employer.

(22) The term "insured work" means employment for employers.

(23) "Institution of higher education," for the purposes of this section, means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or recognized equivalent of such a certificate;

(B) Is legally authorized in the District to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and all colleges and universities in the District are institutions of higher education for purposes of this section;

(D) Is a public or other nonprofit institution.

(24) "Hospital" means an institution which has been licensed by the Mayor of the District as a hospital.

(25) The term "Director" means the Director, Department of Employment Services, established by Reorganization Plan No. 1 of 1980.

(26) The term "most recent work" as used in § 46-111(a) and (b) shall mean the employer for whom the individual last performed 30 work days of "employment" as defined in paragraph (2)(B) of this section; provided, however, that should the individual subsequently perform services in "employment" on a less than 30 hour per week basis and then become "unemployed" as defined in paragraph (5) of this section, the subsequent employer shall be considered the "most recent work" if the individual has earned remuneration in its employ of at least 5 times his weekly benefit amount. (Aug. 28, 1935, 49 Stat. 946, ch. 794, § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14(a); Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, title I, § 1; June 4, 1943, 57 Stat. 100, ch. 117; Aug. 31, 1954, 68 Stat. 988, ch. 1139, § 1; July 25, 1956, 70 Stat. 643, ch. 724, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; Mar. 30, 1962, 76 Stat. 46, Pub. L. 87-424, §§ 1, 2; Oct. 1, 1969, 83 Stat. 130, Pub. L. 91-80, § 1; Dec. 22, 1971, 85 Stat. 756, Pub. L. 92-211, § 2(1)-(13); 1973 Ed., § 46-301; Mar. 3, 1979, D.C. Law 2-129, § 2(a)-(g), 25 DCR 2451; Apr. 30, 1988, D.C. Law 7-104, § 40, 35 DCR 147; Mar. 27, 1993, D.C. Law 9-260, § 101, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15 §§ 101, 201, 40 DCR 5420; Feb. 5, 1994, D.C. Law 10-68, § 40(a), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 39(a), 41 DCR 5193.)

**Cross references.** — As to transfer of funds from District of Columbia account in Unemployment Trust Fund to railroad unemployment insurance account in Unemployment Trust Fund, see 45 U.S.C. § 364.

As to first source employment, see § 1-1161.

As to age of majority, see note following § 21-101.

**Section references.** — This section is referred to in §§ 46-103, 46-107, 46-109, 46-110, and 46-111.

**Effect of amendments.** — D.C. Law 10-68 substituted "22 U.S.C. §§ 288 to 288f-3" for "22 U.S.C. 288-288f-1" in (2)(E)(xvii).

D.C. Law 10-255 substituted a semicolon and "or" for the period at the end of (3)(B).

**Legislative history of Law 2-129.** — Law 2-129, the "District of Columbia Unemployment Compensation Act Amendments of 1978," was introduced in Council and assigned Bill No. 2-209, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first, amended first, second amended first, and second readings on April 18, 1978, June 27, 1978, July 11, 1978, and July 25, 1978, respectively. Signed by the Mayor on August 30, 1978, it was assigned Act No. 2-267 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-104.** — Law 7-104, the "Technical Amendments Act of 1987" was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-260.** — Law 9-260, the "District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-729. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the Mayor on January 25, 1993, it was assigned Act No. 9-408 and transmitted to both Houses of Congress for its review. D.C. Law 9-260 became effective on March 27, 1993.

**Legislative history of Law 10-15.** — D.C. Law 10-15, the "D.C. Unemployment Compensation Comprehensive Improvements Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-52, which was referred to the Committee on Labor. The Bill was

adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 13, 1993, it was assigned Act No. 10-44 and transmitted to both Houses of Congress for its review. D.C. Law 10-15 became effective on September 24, 1993.

**Legislative history of Law 10-68.** — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

**Legislative history of Law 10-255.** — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

**References in text.** — Section 101 of the Internal Revenue Code of the United States, referred to in paragraph (2)(E)(vii), § 1400 of the Internal Revenue Code, referred to in paragraph (3)(B), § 1600 of the Internal Revenue Code of the United States (26 U.S.C.), referred to in paragraph (2)(E)(iv)(II), and § 1603 of the Internal Revenue Code (26 U.S.C.), referred to in paragraph (2)(E)(iv)(II), are references to §§ 101, 1400, 1600, and 1603, respectively, of the Internal Revenue Code, 1939, which were repealed by § 1 of the Act of August 16, 1954, 68A Stat. 915, ch. 736, and are now covered by 26 U.S.C. §§ 501, 502, 521, 3101, 3301, and 3304.

“Reorganization Plan No. 1 of 1980” referred to in paragraph (25) of this section is set out in its entirety following the District of Columbia Self-Government and Governmental Reorganization Act in Volume 1 at page 299.

**This chapter should be liberally construed** to accomplish its purposes and extend its coverage with consequent strict construction of exemption provisions of this section. *Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd.*, App. D.C., 34 A.2d 614 (1943).

**Primary goal of this chapter is to protect employees against economic dependency** caused by temporary unemployment and to reduce necessity of relief or other welfare programs, and underlying that long range objective is the notion that it should be the responsibility of employers to compensate their employees when they become unemployed

through no fault of their own. *Von Stauffenberg v. District Unemployment Comp. Bd.*, 459 F.2d 1128 (D.C. Cir. 1972); *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**Person held to be “employer”** within the District of Columbia Unemployment Compensation Act and liable for contributions thereunder. *Sokol v. McLaughlin*, App. D.C., 147 A.2d 766 (1959).

**“Employment” under interstate arrangements.** — Where the claimant, by combining his military service with his later private employment in Ohio, claims to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constitutes “employment” under the interstate arrangement entered into by the District of Columbia. *Benjamin Rose Inst. v. District Unemployment Comp. Bd.*, App. D.C., 338 A.2d 104 (1975), rev’d on other grounds, App. D.C., 355 A.2d 569, cert. denied, 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101 (1976).

**Exemption for churches and church-related organizations does not violate Establishment Clause** of the First Amendment, since the purpose of this exemption was not aimed at establishing, sponsoring, or supporting religion. *Konecny v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 447 A.2d 31 (1982).

**Congressional intent as to religious, charitable, or educational exemption.** — Where this section exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, the intent of Congress was to make the exception apply where the primary and exclusive purpose was religious, charitable or educational. *International Reform Fed’n v. District Unemployment Comp. Bd.*, 131 F.2d 337 (D.C. Cir.), cert. denied, 317 U.S. 693, 63 S. Ct. 324, 87 L. Ed. 555 (1942).

In excepting from this chapter service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the state or the nation, or those organizations commonly designated “charitable” in the law of trusts. *International Reform Fed’n v. District Unemployment Comp. Bd.*, 131 F.2d 337 (D.C. Cir.),

cert. denied, 317 U.S. 693, 63 S. Ct. 324, 87 L. Ed. 555 (1942).

The purpose of Congress in enacting the 1962 amendment to the District of Columbia Unemployment Compensation Act, was to deny exemption from the act to scientific, literary or educational entities but to continue the exemption to those which had been organized and operated exclusively for religious or charitable purposes. *Greater S.E. Community Hosp. Found., Inc. v. District Unemployment Comp. Bd.*, 407 F.2d 712 (D.C. Cir. 1969).

The language of paragraph (2)(A)(iv)(I) of this section goes beyond churches and church-related organizations, and the legislative scheme behind the statute cannot be construed as limited to the advancement or establishment of religious organizations only. *Konecny v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 447 A.2d 31 (1982).

**Legitimate secular purpose of exemption for churches and related organizations.** — Because the exemption under paragraph (2)(A)(iv)(I) of this section was intended to facilitate the orderly administration of the unemployment compensation laws, and, therefore, ultimately to promote the broader policy of the act, it has a legitimate secular purpose. *Konecny v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 447 A.2d 31 (1982).

**Construction and purpose.** — Although our unemployment compensation statute is remedial in nature and must be liberally construed, it must be given an interpretation in keeping with the intent of the legislature. The overlying purpose of the statute is to minimize the hardship encountered by workers whose condition of unemployment is due to causes utterly beyond their ability to remedy. Underlying this long-range objective is the notion that it should be the responsibility of employers to compensate their employees when they become unemployed through no fault of their own. *Wright v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 509 (1989).

**Exemptions to be strictly construed.** — Exemptions from taxation in general, and especially exemptions from unemployment contributions under this chapter, are to be strictly construed. *National Rifle Ass'n of Am. v. Young*, 134 F.2d 524 (D.C. Cir. 1943).

The contributions required by this chapter are "taxes," and exemptions from such taxes are strictly construed. *Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd.*, App. D.C., 34 A.2d 614 (1943).

**Lay employees of church-run primary and secondary schools exempted.** — In reversing an order of the District of Columbia Department of Employment Services to the effect that lay employees of primary and secondary schools of an archdiocese are required to be covered by 26 U.S.C. §§ 3309(b)(1)(A) and

(B) of the Federal Unemployment Tax Act and its local corollary, paragraphs (2)(A)(iv)(I) and (II) of this section, the District of Columbia Court of Appeals held that the United States Supreme Court's ruling in *St. Martin Evangelical Church v. South Dakota*, 451 U.S. 772, 101 S. Ct. 2142, 68 L. Ed. 2d 612 (1981), that church-run schools continue to be exempt from federal unemployment taxation pursuant to 26 U.S.C. § 3309(b)(1)(A), mandates the reinstatement of the archdiocese's exemption from coverage under local unemployment provisions. *Hickey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 448 A.2d 871 (1982).

**In order to be classified as a "charitable corporation" entitled to exemption** from payment into fund under this chapter, it is not necessary that corporation's principal objective be to provide for the poor, the sick and the needy. *International Reform Fed'n v. District Unemployment Comp. Bd.*, 131 F.2d 337 (D.C. Cir.), cert. denied, 317 U.S. 693, 63 S. Ct. 324, 87 L. Ed. 555 (1942).

The word "charity" is broader than the relief of the needy or poor, and includes a large group of activities for the betterment of individuals or of the entire community. *National Capital Girl Scout Council v. District Unemployment Comp. Bd.*, 231 F. Supp. 546 (D.D.C. 1964).

The language of this section evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions, and all that is requisite under this section is that the institution claiming the exemption be organized and operated exclusively for 1 of the named purposes. *International Reform Fed'n v. District Unemployment Comp. Bd.*, 131 F.2d 337 (D.C. Cir.), cert. denied, 317 U.S. 693, 63 S. Ct. 324, 87 L. Ed. 555 (1942).

**Exclusive charitable operation.** — To come within the exemption of this section, corporation must be organized and operated exclusively for 1 or more of named purposes, and, though its primary purpose is within the exemption, it cannot have the benefit thereof if it has other purposes beyond scope of exemption. *Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd.*, App. D.C., 34 A.2d 614 (1943).

The word "exclusively" within the Unemployment Compensation Law exempting establishments organized and operated exclusively for religious or charitable purposes means "primarily" or "principally" or "in large part." *National Capital Girl Scout Council v. District Unemployment Comp. Bd.*, 231 F. Supp. 546 (D.D.C. 1964).

**Examination of corporate charter.** — In determining whether a corporation is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes within the exemption clause of this section,

recourse must be had to its charter and the statute under the authority of which it was organized. *National Rifle Ass'n of Am. v. Young*, 134 F.2d 524 (D.C. Cir. 1943).

In ascertaining whether a corporation organized under § 29-1001 relating to benevolent, charitable, educational, and similar corporations was exempt from this chapter, said section must be considered but cannot be conclusive in face of the specific objects selected by corporation for inclusion in its charter. *Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd.*, App. D.C., 34 A.2d 614 (1943).

**Corporation not entitled to charitable exemption.** — Where a corporation was formed for improvement of its members in marksmanship, and to promote rifle practice, it was not "organized exclusively for religious, charitable, scientific, literary or educational purposes" within the meaning of this section. *National Rifle Ass'n of Am. v. Young*, 134 F.2d 524 (D.C. Cir. 1943).

A corporation whose object in part, as indicated by its charter, is for the mutual welfare, protection, and improvement of business methods among merchants is not exempt as organized exclusively for "educational or scientific purposes." *Better Bus. Bureau of Wash., D.C., Inc. v. District Unemployment Comp. Bd.*, App. D.C., 34 A.2d 614 (1943).

**Employees of exempt organizations ineligible to receive benefits.** — Organizations which are organized and operated exclusively for religious or charitable purposes are not "employers" within this chapter and are exempt from paying unemployment compensation tax. The employees of such organizations are not deemed to have been "paid wages for employment," thus rendering them ineligible to receive benefits. *Von Stauffenberg v. District Unemployment Comp. Bd.*, 459 F.2d 1128 (D.C. Cir. 1972).

Denial of unemployment compensation benefits to employees of religious and charitable organizations is justified by considerations of administrative convenience and expense of payment and measurement of benefits, and is not unreasonable. *Von Stauffenberg v. District Unemployment Comp. Bd.*, 459 F.2d 1128 (D.C. Cir. 1972).

**Denial of benefits to employees of exempt organizations not constitutional violation.** — A discriminatory classification of employees, created by the Congress' legitimate interest in exempting charitable organizations from the payment of unemployment taxes, by denying benefits to employees of exempt organizations, is reasonable and does not violate due process. *Von Stauffenberg v. District Unemployment Comp. Bd.*, App. D.C., 269 A.2d 110 (1970), aff'd, 459 F.2d 1128 (D.C. Cir. 1972).

Exemption of religious organizations from

the payment of unemployment compensation taxes under this chapter does not violate the establishment of religion clause of the First Amendment. *Von Stauffenberg v. District Unemployment Comp. Bd.*, 459 F.2d 1128 (D.C. Cir. 1972).

**"Directed or controlled" relates to merits of work performed.** — For purposes of determining a worker's place of direction and control pursuant to paragraph (2)(B), the phrase "directed or controlled" encompasses more than the setting of work hours and similar personnel policies; it also has relation to the merits of the work performed. Thus where an employee of a California firm under contract to a federal agency based in the District of Columbia was under the control of the firm insofar as administrative matters were concerned but received training, scheduling and guidance from the agency, she received direction and control for her services in the District of Columbia. *Haugness v. District Unemployment Comp. Bd.*, App. D.C., 386 A.2d 700 (1978).

**Insurance agents.** — Vacation pay calculated according to that received by salaried employees and expense allowances which exceed expenses may bring insurance agents within coverage of this chapter. *Gordon v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 442 A.2d 107 (1981).

**Independent contractors excluded.** — When the relationship of a worker to a company is that of an independent contractor rather than that of an employee as defined by the common law, that worker is not entitled to benefits under the District of Columbia Unemployment Compensation Act. *Roseexpress, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 602 A.2d 659 (1992).

**Opera singer an independent contractor.** — Where opera's employees regularly scheduled, advertised, and presented operas in the broad sense, but did not direct in detail the performance of the particular opera in which plaintiff performed; the opera company did not in the course of its business present productions with full-time performers, directors and designers on its staff but contracted for these types of services on a production-by-production basis; and did not own theater space, but leased it; the plaintiff/singer was not an employee but an independent contractor. *Spackman v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 590 A.2d 515 (1991).

Plaintiff, opera singer, was not an employee where defendant did not have an unrestricted right to terminate plaintiff; plaintiff retained his individual artistic integrity as an actor; the opera, itself, did not set rehearsal schedules and give stage directions to plaintiff while he performed under the terms of the contract for his operatic performance; and the stage manager and the director who were retained for the

presentation of this particular opera, set plaintiff's work schedule and gave him stage directions. Spackman v. District of Columbia Dep't of Emp. Servs., App. D.C., 590 A.2d 515 (1991).

**Voluntary dismissal payments have been considered "earnings" since 1972.** Dyer v. District of Columbia Unemployment Comp. Bd., App. D.C., 392 A.2d 1 (1978).

**Voluntary dismissal payments negate "unemployed" status.** — An individual is not "unemployed" for a given pay period if he receives voluntary dismissal payments for that period. Dyer v. District of Columbia Unemployment Comp. Bd., App. D.C., 392 A.2d 1 (1978).

**But not self-employment subsequent to termination of other employment.** — In light of the removal of the explicit proscription against self-employment formerly found in paragraph (5) of this section, the public policy preference for compensation through employment rather than welfare compensation and the existence of other statutory safeguards against excessive or unjustified benefits, paragraph (5) of this section was interpreted as

erecting no barrier to unemployment compensation for persons engaging in self-employment subsequent to the termination of their employment by another. Cumming v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 1010 (1978).

**"Computation date" inapplicable to § 46-103.** — The definition of "computation date" in paragraph (9) of this section does not apply to § 46-103, which authorizes the Board to increase employer contribution rates in certain instances. District Unemployment Comp. Bd. v. Security Storage Co., App. D.C., 365 A.2d 785 (1976), cert. denied, 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256 (1977).

**Cited** in Bryan v. District Unemployment Comp. Bd., App. D.C., 342 A.2d 45 (1975); Cobo v. District of Columbia Dep't of Emp. Servs., App. D.C., 501 A.2d 1278 (1985); Wells v. District of Columbia Dep't of Emp. Servs., App. D.C., 513 A.2d 235 (1986); Anthony v. District of Columbia Dep't of Emp. Servs., App. D.C., 528 A.2d 883 (1987); In re M.M.D., App. D.C., 662 A.2d 837 (1995).

## § 46-102. District Unemployment Fund.

(a) There is hereby established the District Unemployment Fund, as a special deposit in the Treasury of the United States, into which shall be paid all contributions received or collected pursuant to this chapter and from which shall be paid all benefits and refunds provided for under this chapter. The Fund shall consist of 3 separate accounts: (1) a Clearing Account; (2) an Unemployment Trust Fund Account; and (3) a Benefit Account; and be managed and controlled by the Director in the manner provided in this chapter, and the Director shall keep complete and accurate accounts of the status of the Fund and shall include a statement of such status in its yearly report to Congress.

(b) Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid by the date on which such interest is due. No interest payment shall be paid directly or indirectly from amounts in the District Unemployment Fund. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 2; June 4, 1943, 57 Stat. 105, ch. 117; 1973 Ed., § 46-302; Aug. 10, 1984, D.C. Law 5-102, § 2(a), 31 DCR 2902; Mar. 27, 1993, D.C. Law 9-260, § 202, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 202, 40 DCR 5420.)

**Section references.** — This section is referred to in §§ 46-101 and 46-115.

**Legislative history of Law 5-102.** — Law 5-102, the "District of Columbia Unemployment Compensation Act Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-377, which was retained by Council. The Bill was adopted on first and second readings on April 30, 1984 and May 15, 1984, respectively. Signed by the Mayor on June 6,

1984, it was assigned Act No. 5-143 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**References in text.** — Title XII of the Social Security Act, referred to in subsection (b), is 42 U.S.C. §§ 1321-1324.

**Cited** in Anthony v. District of Columbia

Dep't of Emp. Servs., App. D.C., 528 A.2d 883  
(1987).

## § 46-102.1. Unemployment Compensation Study Commission on the Solvency of the District Unemployment Fund.

Expired.

**Legislative history of Law 5-3.** — Law 5-3, the “District of Columbia Unemployment Compensation Act of 1983,” was introduced in Council and assigned Bill No. 5-57, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on March 1, 1983. Signed by the Mayor on March 15, 1983, it was assigned Act No. 5-13 and transmitted to both Houses of Congress for its review.

**Expiration of Law 5-3.** — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (1)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

Section 46-102.1, which derived from § 3 of D.C. Law 5-3, expired December 31, 1985.

## § 46-103. Employer contributions.

(a) Each employer who employs 1 or more individuals in any employment shall for each month, beginning with the month of January 1936, and ending December 31, 1939, pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to such employment by him during such month:

(1) With respect to employment during the calendar year 1936, the rate shall be 1%;

(2) With respect to employment during the calendar year 1937, the rate shall be 2%;

(3) With respect to employment during the calendar years 1938 and 1939, the rate shall be 3%.

(b) Each employer shall pay contributions equal to 2.7% of wages paid by him during the calendar year 1940 and thereafter with respect to employment after December 31, 1939. After December 31, 1978, each employer shall pay contributions at the rate in effect for the current year as provided by subsections (c) (3), (c) (4) (B), and (c) (8) (A) of this section.

(c)(1) The Director shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939; provided, that contributions received after July 1, 1981, by reason of the solvency tax set forth in paragraph (4)(B)(ii) of this subsection shall not be credited to the separate account of each employer. Each year the Director shall credit to each of such accounts having a positive reserve on the computation date, the interest earned from the federal government in the following manner: Each year the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to the District's account in the Unemployment Trust Fund in the Treasury of the United States for the 4 most recently completed calendar quarters shall be credited prior to

the next computation date on the pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the Unemployment Trust Fund in the Treasury of the United States to the account of the District, any voluntary contribution made by an employer after June 30th of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. Nothing in this chapter shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the Fund either on his own behalf or on behalf of such individuals.

(2)(A) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers, except as specifically provided by subparagraphs (B), (C), (D), and (E) below. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers. All base period employers whose accounts could be charged with benefits paid to an individual with respect to a claim made pursuant to this chapter shall be given notice of potential charges.

(B) After December 31, 1971, benefits paid to an individual for any week during which he is attending a training or retraining course under the provision of § 46-111(d)(2) shall not be charged against such employer accounts, except that this subparagraph shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(C) After December 31, 1971, extended benefits paid to an exhaustee under the provisions of § 46-108(g) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(D) Commencing with the first full calendar quarter following the effective date of this chapter, but no earlier than January 1, 1979, benefits paid to an individual subsequent to a disqualification imposed under the provisions of § 46-111(a) or (b) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(E) Benefits paid to an individual with respect to any week of unemployment during which the individual is a continuing part-time employee of an employer other than the separating employer shall not be charged to the

continuing employer's account, except this provision shall not apply to those employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(3)(A) After January 1, 1983, each employer newly subject to this chapter shall pay contributions at a rate equal to the average rate on taxable wages of all employers for the preceding 12-month period ending June 30th (rounded to the next higher tenth of 1%) or 2.7%, whichever is higher, until he has been an employer for a sufficient period to meet the requirement to qualify for a reduced rate based on experience as provided in paragraph (4) of this subsection.

(B) Employers electing to become liable for payments in lieu of contributions shall make payments pursuant to subsection (h) of this section.

(4)(A) After December 31, 1978, contribution rates of all employers whose accounts could have been charged with benefits paid throughout the 36-consecutive-calendar-month period ending on the computation date applicable to such year or part thereof shall be determined in accordance with the provisions of subparagraph (B) of this paragraph.

(B)(i) If the balance of the Fund referred to in § 46-107 as of September 30, in any calendar year exceeds 3% of the total payrolls of employers subject to contributions under this chapter on the preceding June 30, Table I in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(ii) If the balance of the Fund as of September 30 in any calendar year shall be greater than 2.5% but not in excess of 3% of the total payrolls of employers subject to contributions under this chapter on the preceding June 30, Table II in subsection (c)(8)(A) of this section shall be used to compute the rates for employers pursuant to subparagraph (A) of this paragraph.

(iii) If the balance of the Fund as of September 30 in any calendar year shall be greater than 2% but not in excess of 2.5% of the total payrolls of employers subject to contributions under this chapter on the preceding June 30, Table III in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(iv) If the balance of the Fund on September 30 of any calendar year shall be greater than 1.5% but not in excess of 2% of the total payrolls subject to contributions on the preceding June 30, Table IV in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(v) If the balance of the Fund on September 30 of any calendar year shall be greater than .8% but not in excess of 1.5% of the total payrolls of employers subject to contributions under this chapter on the preceding June 30, Table V in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(vi) If the balance of the Fund on September 30 of any calendar year shall not be greater than .8% of the total payrolls of employers subject to contributions under this chapter on the preceding June 30, Table VI in subsection (c)(8)(A) of this section shall be used to compute employer rates pursuant to subparagraph (A) of this paragraph.

(C) When the Director finds that the continuity of an employer's employment experience has been interrupted solely by reason of 1 or more of the owners, officers, managers, partners, or majority stockholders of such employer's employing enterprise having served in the armed forces of the United States of America or any of its allies during a time of war, such employer's employment experience shall be deemed to have been continuous throughout the period that such individual or individuals so served in such armed forces, including the period up to the time it again resumes the status of an employer liable for contributions under this chapter, provided it resumes such status within 2 years from the date of discharge of such individual or individuals or from the date of the termination of such war, whichever date is the earlier. For the purposes of this subparagraph, in determining an employer's contribution rate his average annual payroll shall be the average of his last 3 annual payrolls.

(5) The Director shall for any uncompleted portion of the calendar year beginning July 1, 1943, and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, except as provided in subsection (c)(3) of this section. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Director and benefit payments disbursed through the applicable computation date. The Director shall compute rates for the second 6 months of 1963 for all employers first acquiring the necessary 12 months' benefit experience under subsection (c)(4)(A) of this section on the computation date June 30, 1963. Such rates shall be based upon such employer's experience in the payment of contributions and benefits charged against his account through June 30, 1963, prior to the crediting of his account with Trust Fund interest. All employers issued a rate for the second 6 months of 1963, under this subsection, shall have a computation date of September 30, 1963, for the calendar year 1964.

(6) If, as of the date such classification of employers is made, the Director finds that an employing unit has failed to file any report in connection therewith, or has filed a report which the Director finds incorrect or insufficient, the Director shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time, and notify the employing unit thereof by registered mail addressed to its last-known address. Unless such employing unit shall file the report or a correct or sufficient report, as the case may be, within 15 days after the mailing of such notice, the Director shall compute such employing unit's rate of contribution on the basis of such estimates, and the rates so determined shall be subject to increase, but not to reduction, on the basis of subsequently ascertained information.

(7)(A) If all or substantially all of the business of any employer is transferred, the transferee shall be determined a successor for the purposes of this section.

(i) If the Director is unable to get information upon which to determine whether or not all or substantially all of the business has been

transferred, the Director may, in the Director's discretion, make such determination based upon the quarterly payrolls of the employers involved for the last complete calendar quarter prior to the transfer and the first complete calendar quarter after such transfer.

(ii) In the event of a transfer of all or substantially all of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the director, on the Director's own motion or on application of an interested party, finds that all of the following conditions exist:

(I) The transferee has not assumed any of the transferor's obligations;

(II) The transferee has not continued or resumed transferor's goodwill;

(III) The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

(IV) The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(B) The successor, if not already subject to this section, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(C) The successor shall take over and continue the employer's account, including its reserve and all other aspects of its experience under this section, in proportion to the payroll assignable to the transferred business as determined for the purposes of this section by the Director. However, his successor shall take over only the reserve actually credited to the account of the transferor or for which the transferor has filed a claim with the Director at the date of transfer. The successor shall be secondarily liable for any amounts owed by the employer to the Fund at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(D) The benefit chargeability of a successor's account under subsection (c) of this section, if not accrued before the transfer date, shall begin to accrue on the transfer date in case the transferor's benefit chargeability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit chargeability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not chargeable before the transfer date, shall become chargeable on the transfer date, in case the transferor was then chargeable for benefit payments; or shall become chargeable on the date otherwise applicable to the successor or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was chargeable for benefit payments on the transfer date.

(E) The account taken over by the successor employer shall remain chargeable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(F) Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of transfer, his rate of contributions the remainder of the calendar year shall be his rate with respect to the period immediately preceding his date of acquisition. If the successor was not an employer prior to the date of transfer, his rate shall be the rate applicable to the transferor or transferors with respect to the period immediately preceding the date of transfer; provided, that there was only 1 transferor or there were only transferors with identical rates; if the transferor rates were not identical, the successor's rate shall be the highest rate applicable to any of the transferors with respect to the period immediately preceding the date of transfer. The rate of the transferor, if still subject to the chapter, will not be redetermined and shall remain the rate with respect to the period immediately preceding the date of transfer.

(G) For future years, for the purposes of subsection (c) of this section, the Director shall determine the "experience under this section" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's payroll, contributions, and the benefit charges which the Director determines to be properly assignable to the business transferred.

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

(A) As of the computation date, the total benefits paid after June 30, 1939, then chargeable or charged to any employer's account, shall be subtracted from the total of all contributions credited to his account with respect to employment since May 31, 1939. The result of this computation shall be known as the employer's reserve and the employer's contribution rate for the ensuing calendar year shall be established under Table I, II, III, IV, V, or VI of this subparagraph in accordance with the provisions of paragraph (4)(B) of this subsection.

#### TABLE I

0.1% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;

0.2% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;

0.5% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;

0.8% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;

1.1% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;

1.4% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;

- 1.7% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 4.2% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 4.5% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 4.8% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 5.1% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 5.4% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE II

- 0.6% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 1.0% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 1.3% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 1.6% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 1.9% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 2.1% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;

- 2.5% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 2.7% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 3.1% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 3.3% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 4.6% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 4.9% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 5.2% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 5.5% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 5.8% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE III

- 1.0% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 1.4% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 1.7% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 2.5% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 2.7% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;

- 3.0% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 3.4% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 3.6% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.0% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 5.3% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 5.6% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 5.9% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 6.2% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE IV

- 1.3% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 1.7% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 2.8% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 3.0% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 3.4% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;

- 3.6% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 3.8% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 4.0% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.4% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 5.7% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 6.0% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 6.3% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 6.6% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE V

- 1.6% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 3.1% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 3.3% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 3.5% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 3.7% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 3.9% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;

- 4.1% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 4.2% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.8% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 6.1% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 6.4% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 6.7% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 7.0% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE VI

- 1.9% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 3.4% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 3.6% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 3.8% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 4.0% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 4.2% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 4.3% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;

4.4% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;

6.2% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;

6.5% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;

6.8% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;

7.1% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;

7.4% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

(B) Except as otherwise provided in this section, whenever through inadvertence or mistake erroneous charges or credits are found to have been made to experience-rating accounts, the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation or rate assigned prior to the date of discovery but shall be used on the next computation date in calculating future contribution rates.

(C)(i) During those periods when the additional benefits program created by § 46-108(i) is in effect there shall be added to each employer's rate of contribution, determined in accordance with subparagraph (A) of this paragraph, an additional tax of 0.6%. Revenues collected from the added tax shall not be credited to the individual accounts of employers. Reimbursable employers shall pay additional reimbursements equal to amounts paid to claimants in their former employ for the additional benefits program as they do for the regular benefits program.

(ii) The added tax shall trigger "on" in accordance with the additional benefits program trigger, and shall be assessed retroactively to the first day of the calendar quarters in which the additional benefits program becomes operational, and will be collected for each quarter in which the additional benefits program is in effect.

(9) As used in this subsection:

(A) The term "annual payroll" means the total amount of wages for employment paid by an employer during a 12-month period ending 90 days prior to the computation date.

(B) The term "average annual payroll," except for the purposes of paragraph (4)(C) of this subsection, means the average of the annual payrolls of any employer for the 3 consecutive 12-month periods ending 90 days prior to the computation date; provided, that for an employer whose account could have been charged with benefit payments throughout at least 12 but less than 36 consecutive calendar months ending on the computation date, the term "average annual payroll" means the total amount of wages for employment paid by him during the 12-month period ending 90 days prior to the computation date.

(C) The term "base-period wages" means the wages paid to an individual during his base period for employment.

(D) The term "base-period employers" means the employers by whom an individual was paid his base-period wages.

(E) The term "most recent employer" means that employer who last employed such individual immediately prior to such individual's filing an initial claim for benefits.

(10) At least 1 month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Director shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within 30 days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Director shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of 3 members who shall be employees of the Director and appointed by the Director. The findings and decision of this Committee shall not be subject to review by the Office of the Inspector General. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to § 46-112, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified in writing of the Director's denial of his application or of the Director's redetermination. An employer aggrieved by the Director's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act.

(11) After December 31, 1971, the separate account established for an employer under the provisions of paragraph (1) of this subsection shall be discontinued effective the calendar quarter next succeeding 3 calendar years after the employer has been determined out of business. Thereafter no employer shall have any right to or interest in such discontinued account.

(d) The contributions payable pursuant to subsections (b) and (c) of this section shall become due and be paid by each employer to the Director in accordance with such regulations as the Board may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(e)(1) From December 31, 1939, to January 1, 1955, wages, for the purpose of this section, shall not include any amount in excess of \$3,000 paid by an

employer to any person arising out of his or her employment during any calendar year. From January 1, 1955, to December 31, 1971, wages shall not include any amount in excess of \$3,000 actually paid by an employer to any person during any calendar year. From January 1, 1972, through December 31, 1977, inclusive, wages shall not include any amount in excess of \$4,200. From January 1, 1978, through December 31, 1981, taxable wages shall not include any amount in excess of \$6,000. For the purpose of determining employer contributions after January 1, 1982, the term "wages" shall not include any amount in excess of \$7,500 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. § 3306), whichever is greater) actually paid by an employer to any person during the calendar year. After December 31, 1954, the term "employment" for the purpose of this subsection shall include services constituting employment under any employment security law of a state or of the federal government. After December 31, 1971, the term "employment" for the purpose of this subsection shall include services constituting employment performed in the employ of a transferor as determined under the provisions of subsection (c)(7) of this section. For the purpose of determining employer contributions after January 1, 1983, the term "wages" shall not include any amount in excess of \$8,000 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. § 3306), whichever is greater) actually paid by an employer to any person arising out of employment during any calendar year.

(2) After January 1, 1993, the term "wages" shall not include any amount in excess of \$9,000 actually paid to any person arising out of employment in any succeeding calendar year.

(3) After January 1, 1994, the term "wages" shall not include any amount in excess of \$9,500 actually paid to any person arising out of employment in any succeeding calendar year; provided, however that should the balance in the Fund referred to in § 46-107 exceed \$40 million as of September 30, 1993, then the term "wages" contained in paragraph (2) of this subsection shall be applicable.

(4) After January 1, 1995, the term "wages" shall not include any amount in excess of \$10,000 actually paid to any person arising out of employment in any succeeding calendar year; provided, however, that should the balance in the Fund referred to in § 46-107 exceed \$80 million as of September 30, 1994, then the term "wages" contained in paragraph (3) of this subsection shall be applicable; be it further provided, however, that if the term "wages" has the same meaning as in paragraph (2) of this subsection as of December 31, 1994, then the term "wages" shall not include any amount in excess of \$9,500 actually paid to any person arising out of employment in any succeeding calendar year.

(5) After January 1, 1996, the term "wages" shall not include any amount in excess of \$10,000 actually paid to any person arising out of employment in any succeeding calendar year; provided, however, that should the balance in the Fund referred to in § 46-107 exceed \$120 million as of September 30, 1995, then the term "wages" contained in paragraph (4) of this subsection shall be applicable.

(f)(1) In the event the District of Columbia should elect to cover employees under this chapter under the provisions of § 46-101(2)(H)(i), or in the event any of its instrumentalities are required to be covered under this chapter, in lieu of contributions required of employers under this chapter, the District of Columbia shall pay into the Fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the District. If benefits paid an individual are based on wages paid by the District of Columbia and 1 or more other employers, the amount payable by the District to the Fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the District of Columbia bears to the total amount of the base-period wages paid to the individual by all of his base-period employers.

(2) The amount of payment required under this section shall be ascertained by the Director quarterly and shall be paid from the general funds of the District at such time and in such manner as the Mayor of the District of Columbia may prescribe except that to the extent that benefits are paid on wages paid by the District from special administrative funds, the payment by the District into the Unemployment Fund shall be made from such special funds. The District of Columbia shall be liable only for 50% of any extended benefits paid.

(3) After December 31, 1977, the District shall be provided the option of financing the costs of benefits paid to employees of the District by electing to pay contributions under the provisions of subsection (c) of this section or by electing to become liable for payments in lieu of contributions under the same terms and conditions provided for nonprofit organizations in subsection (h) of this section, except as provided in the following sentence. For weeks of unemployment beginning January 1, 1979, and thereafter, the District will be chargeable if it elects to pay contributions, or will be liable if it elects to make payments in lieu of contributions, for the cost of regular benefits plus 100% of any extended benefits paid that are attributable to service in the employ of the District.

(g) Contributions due under this chapter with respect to wages for insured work shall, for the purpose of this section, be deemed to have been paid to the Fund as of the date payment was made as contributions therefor under another state or federal employment security law if payment into the Fund of such contributions is made on such terms as the Director finds will be fair and reasonable as to all affected interests; provided, that liability to the Fund shall not exceed contributions for the 3 calendar years next preceding the quarter in which liability was determined. Payments to the Fund under this subsection shall be deemed to be contributions for purposes of this section.

(h) Notwithstanding any other provisions of this section, benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and subsection (i) of this section, a nonprofit organization is an organization (or group of organizations) described in § 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under § 501(a) of such Code.

(1) Any nonprofit organization which, pursuant to § 46-101(2)(A)(iii), is, or becomes, subject to this chapter on or after January 1, 1972, shall pay

contributions under the provisions of subsection (c) of this section, unless it elects, in accordance with this paragraph to pay to the Director for the District Unemployment Fund an amount equal to the amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any nonprofit organization which is, or becomes, subject to this Act on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than 1 taxable year beginning with January 1, 1972; provided, that it files with the Director a written notice of its election within the 30-day period immediately following such date or within a like period immediately following the date of enactment of this subparagraph whichever occurs later.

(B) Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of that and the next year beginning with the date on which such liability begins by filing a written notice of its election with the Director not later than 30 days immediately following the date of the determination of such liability.

(C) Any nonprofit organization which makes an election in accordance with subparagraph (A) or subparagraph (B) of this paragraph will continue to be liable for payments in lieu of contributions until it files with the Director a written notice terminating its election not later than 30 days prior to the beginning of the taxable year for which such termination shall first be effective.

(D) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the Director not later than 30 days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminal by the organization for that and the next year.

(E) The Director may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(F) The Director, in accordance with such regulations as the Board may prescribe, shall notify each nonprofit organization of any determination which the Director may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of subsection (c) of this section.

(G) Any nonprofit organization which elects to make payments in lieu of contributions into the District Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 46-101(3)(c) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits

pursuant to § 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph including either subparagraph (A) or subparagraph (B) of this paragraph.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the Director, the Director shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such organization.

(B)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this subparagraph. Such method of payment shall become effective upon approval by the Director.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the Director, the Director shall bill each nonprofit organization for an amount representing 1 of the following:

(I) For 1972, one-fourth of 1% of its total payroll for 1971;

(II) For years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the Director shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year;

(III) For any organization which did not pay wages throughout the 4 calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Director shall determine.

(iii) At the end of each taxable year, the Director may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the Director shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (C) of this paragraph. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Director, be refunded from the Fund or retained in the Fund as part of the payments which may be required for the next taxable year.

(C) Payment of any bill rendered under subparagraph (A) or subparagraph (B) of this paragraph shall be made not later than 30 days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (E) of this paragraph.

(D) Payments made by a nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(E) The amount due specified in any bill from the Director shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the Director, setting forth the grounds for such application or appeal. The Director shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization files an appeal as set forth in subsection (c)(10) of this section, setting forth the grounds for the appeal.

(F) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to § 46-105(c), apply to past due contributions.

(3) In the discretion of the Director, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to execute and file with the Director a surety bond approved by the Director, or it may elect instead to deposit with the Director money. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(A) The amount of the bond or deposit required by this paragraph shall be equal to one-fourth of 1% of the organization's total wages paid for employment as defined in § 46-101(2)(A)(iii) for the 4 calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such 4 calendar quarters, the amount of the bond or deposit shall be as determined by the Director.

(B) Any bond deposited under this paragraph shall be in force for a period of not less than 2 taxable years and shall be renewed with the approval of the Director at such times as the Director may prescribe, but not less frequently than at 2-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The Director shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within 15 days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in § 46-105(c), shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(C) Any deposit of money in accordance with this paragraph shall be retained by the Director in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any

deductions as hereinafter provided. The Director may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in § 46-105(c). The Director shall require the organization within 15 days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization's deposit at the prior level. The Director may, at any time, review the adequacy of the deposit made by any organization. If, as the result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within 15 days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.

(D) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the Director may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the 4-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided, that the Director may extend for good cause the applicable filing, deposit or adjustment period by not more than 15 days.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under paragraph (2) of this subsection, the Board may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(5) Each employer that is liable for payments in lieu of contributions shall pay to the Director for the fund the amount of regular benefits plus one-half of the amount of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than 1 employer and 1 or more of such employers are liable for payments in lieu of contributions, the amount payable to the Fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (A) or subparagraph (B) of this paragraph.

(A) If benefits paid to an individual are based on wages paid by 1 or more employers that are liable for payments in lieu of contributions and on wages paid by 1 or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(B) If benefits paid to an individual are based on wages paid by 2 or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total

base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(6) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subsection (h)(1) of this section, may file a joint application to the Director for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph. Upon approval of the application, the Director shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than 2 years and thereafter until terminated at the discretion of the Director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The Director shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(i) Notwithstanding any provisions in subsection (h) of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by subsection (c) of this section and, pursuant to subsection (h) of this section, elects within 30 days after January 1, 1972, to make payments in lieu of contributions, shall not be required to make any such payment on account of any benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which began on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization.

(j) Notwithstanding any of the provisions of this chapter, no employer's experience rating account shall be charged and no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to the District of Columbia by the federal government.

(k) Notwithstanding any provisions of this chapter, no employer's experience rating account shall be charged with respect to benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 46-101(3)(C) to the extent that the Unemployment Insurance Fund is reimbursed for such benefits pursuant to § 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).

(l)(1) Commencing January 1, 1992, an interest surcharge of 0.1% shall be added to the contribution rate of each employer required to pay contributions by this chapter, excepting those reimbursing employers subject to the requirements of subsection (h) of this section.

(2) All interest surcharges collected under this subsection shall be considered separate from contributions required by subsection (c) of this section and shall be deposited in the Interest Account established by § 46-115(c) and shall not be credited to the individual accounts of employers.

(3) No interest surcharge shall be required for any year following the year in which the amount of interest-bearing advances has been reduced to zero; provided, however, that an interest surcharge shall be reimposed by the Director of the Department of Employment Services ("Director") for the calendar year following any year in which an interest-bearing advance remains outstanding on October 1 and where there are not sufficient funds in the Interest Account to pay the interest due for that year. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; July 2, 1940, 54 Stat. 731, ch. 524, § 1; Nov. 21, 1941, 55 Stat. 781, ch. 500, § 1; Nov. 9, 1942, 56 Stat. 1016, ch. 636; June 4, 1943, 57 Stat. 105, ch. 117; July 11, 1946, 60 Stat. 527, ch. 557; July 26, 1947, 61 Stat. 494, ch. 342, §§ 1, 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 989, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 47, Pub. L. 87-424, §§ 3-5; Sept. 27, 1962, 76 Stat. 633, Pub. L. 87-705, § 1; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(44)(A); Dec. 22, 1971, 85 Stat. 760, Pub. L. 92-211, § 2(14)-(26); 1973 Ed., § 46-303; Dec. 7, 1974, 88 Stat. 1617, Pub. L. 93-515, title III, § 301(1); May 13, 1975, D.C. Law 1-2, § 1(1), 21 DCR 3941; Mar. 3, 1979, D.C. Law 2-129, § 2(h)-(q), 25 DCR 2451; Mar. 16, 1982, D.C. Law 4-86, § 2(a), (b), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(a)-(d), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(a)-(h), 30 DCR 1371; Aug. 10, 1984, D.C. Law 5-102, § 2(b), 31 DCR 2902; Mar. 13, 1985, D.C. Law 5-124, §§ 2(a)(1), (a)(2), (b), 4, 31 DCR 5165; June 19, 1986, D.C. Law 6-122, § 2, 33 DCR 2933; Feb. 24, 1987, D.C. Law 6-189, § 2, 33 DCR 7935; Mar. 16, 1988, D.C. Law 7-91, § 2(a), 35 DCR 712; Apr. 8, 1992, D.C. Law 9-89, § 2(a), 39 DCR 1361; Mar. 16, 1993, D.C. Law 9-200, § 2(a), 39 DCR 9217; Mar. 27, 1993, D.C. Law 9-260, §§ 102, 203, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 102, 203, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, §§ 39(b), 49(d), 41 DCR 5193.)

**Cross references.** — As to judicial review by District of Columbia Court of Appeals, see § 1-1510.

As to power of Board to recommend change in rate of contributions, see § 46-114.

**Section references.** — This section is referred to in §§ 46-105, 46-107, and 46-118.

**Effect of amendments.** — Section 39(b) of D.C. Law 10-255 validated a previously made change in (c)(7)(A).

Section 49(d) of D.C. Law 10-255 validated a previously made change in an uncodified portion of D.C. Law 10-15, § 203(b).

**Legislative history of Law 1-2.** — Law 1-2, the "Unemployment Compensation Act —

"Amendment," was introduced in Council and assigned Bill No. 1-9, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on February 18, 1975, and March 4, 1975, respectively. Signed by the Mayor on March 10, 1975, it was assigned Act No. 1-3 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 4-86.** — Law 4-86, the "Unemployment Trust Fund Revenue Temporary Act of 1981," was introduced in Council and assigned Bill No. 4-378, which was

referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 15, 1981, and January 5, 1982, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-140 and transmitted to both Houses of Congress for its review. Law 4-86 was repealed by § 3 of Law 4-147, effective September 17, 1982.

**Legislative history of Law 4-147.** — Law 4-147, the “Unemployment Trust Fund Revenue and Conformity Act of 1982,” was introduced in Council and assigned Bill No. 4-431, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first and second readings on July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-218 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-3.** — See note to § 46-102.1.

**Legislative history of Law 5-102.** — See note to § 46-102.

**Legislative history of Law 5-124.** — Law 5-124, the “District of Columbia Unemployment Compensation Act Second Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-454, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 10, 1984, and September 12, 1984, respectively. Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-177 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-122.** — Law 6-122, the “District of Columbia Unemployment Compensation Act Temporary Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-409, which was retained by Council. The Bill was adopted on first and second readings on March 25, 1986, and April 15, 1986, respectively. Signed by the Mayor on April 28, 1986, it was assigned Act No. 6-158 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 6-189.** — Law 6-189, the “District of Columbia Unemployment Compensation Act Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-410, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned Act No. 6-240 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-91.** — Law 7-91, the “D.C. Unemployment Compensation Act Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-256, which was

referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 8, 1987, and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-133 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 9-89.** — Law 9-89, the “District of Columbia Unemployment Compensation Act Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-410. The Bill was adopted on first and second readings on January 7, 1992, and February 4, 1992, respectively. Signed by the Mayor on February 21, 1992, it was assigned Act No. 9-157 and transmitted to both Houses of Congress for its review. D.C. Law 9-89 became effective on April 8, 1992.

**Legislative history of Law 9-200.** — Law 9-200, the “District of Columbia Unemployment Compensation Act Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-390, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-325 and transmitted to both Houses of Congress for its review. D.C. Law 9-200 became effective on March 16, 1993.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-255.** — See note § 46-101.

**Effective date.** — Section 3(b) of D.C. Law 7-91 provided that the amendments to §§ 46-103 and 46-108 shall be effective beginning January 1, 1988.

**Expiration of Law 5-3.** — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s), the act shall expire on December 31, 1985.

**References in text.** — The District of Columbia Administrative Procedure Act, referred to in paragraph (c)(10), is Chapter 15 of Title 1.

Section 501 of the Internal Revenue Code of 1954, referred to in subsection (h), is codified as 26 U.S.C. § 501.

**Expiration of former Table IV minimum rate.** — Section 2(a)(3) of D.C. Law 5-124 provided that the 0.8% minimum rate contained in Table IV shall expire on December 31, 1987. Table IV, which was set forth in (c)(8)(A), was deleted by D.C. Law 7-91.

**Intent of compensation system.** — The merit rating system of unemployment compensation is intended to stir employers to stabilize employment by providing a tax incentive for the avoidance of economic layoffs, and the heart

of this statutory scheme is to relieve employers from the standard payroll tax rate if they can demonstrate by experience over a stated period that compensable layoffs have been held below a certain percentage. Hollingsworth v. District of Columbia Unemployment Comp. Bd., App. D.C., 375 A.2d 515 (1977).

**Compulsory unemployment contributions under this chapter are "taxes."** National Rifle Ass'n of Am. v. Young, 134 F.2d 524 (D.C. Cir. 1943).

**Exemptions construed against employer.** — Permitting employers to make lower contribution rates to the Unemployment Compensation Fund constitutes an exemption from the standard contribution rate and, like any tax exemption, the privilege of paying lower rates must be strictly construed against the tax-paying employer and in favor of the taxing authority. District Unemployment Comp. Bd. v. Security Storage Co., App. D.C., 365 A.2d 785 (1976), cert. denied, 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256 (1977).

**Change of substantial ownership of business.** — Where a corporation and partnership leasing and operating corporation's plant were not parties to or subject of "merger, consolidation or other form of reorganization," the change effected was not a mere "change in legal identity or form," but was a complete change in the substantial as well as the formal ownership of the business, and where the partnership was not "owned or controlled by substantially same interests as predecessor," the experience of the corporation and the partnership could not be combined in determining the partnership's unemployment compensation contributions, even though the partnership retained the corporation's manager and employees. Schlosberg v. District Unemployment Comp. Bd., 167 F.2d 881 (D.C. Cir. 1948).

**Corporate dissolution is "reorganization effecting change in legal identity."** — The dissolution of a corporation and the acquisition of its business by purchasers of its stock as partners constitutes "reorganization effecting a change in legal identity or form" within Unemployment Compensation Act, so as to require the partners to request a transfer to them of the corporation's experience within a specified time to be entitled to credit therefor and a lower rate of unemployment compensation contributions than for new employers. Spencer v. Lampros, 216 F.2d 462 (D.C. Cir. 1954).

**Collection of contributions at proper rate following change in ownership.** — The Board's collection of unemployment compensation contributions from a partnership leasing and operating a corporation's plant at rates paid by the corporation did not estop the Board, after discovering the change of ownership, from collecting contributions at proper rate.

Schlosberg v. District Unemployment Comp. Bd., 167 F.2d 881 (D.C. Cir. 1948).

**Change of partnership held not to constitute change in management.** — Where the admission of the partners' wives into the partnership caused no change in the management or risk, the partnership was the same employer after as before the admission, and the partnership was not required to pay contributions at a new rate. Cohen v. District Unemployment Comp. Bd., 167 F.2d 883 (D.C. Cir. 1948).

**Subsection (c)(7) inapplicable where only 1 employing unit involved.** — Subsection (c)(7) of this section, enabling 2 or more employing units to combine their experience after a change in legal identity or form, does not require a request by a partnership which admitted the wives of the partners into the firm without a change in management or risk, in order to avoid the necessity for paying contributions at different rates based on differences in experience, since there was only 1 employing unit. Cohen v. District Unemployment Comp. Bd., 167 F.2d 883 (D.C. Cir. 1948).

**Employer held not "newly subject" to chapter.** — As this section clearly and unambiguously provides that the standard contribution rate for unemployment compensation insurance should be 2.7% except that after December 31, 1971, each employer "newly subject" to this chapter should pay contributions at a rate later determined to be 1.1%, and as petitioner first became subject to the chapter in October of 1969, petitioner was not "newly" subject to the chapter and was not entitled to a reduced rate until it had been an employer for a sufficient period to qualify for a reduced rate based on experience. Temporaries, Inc. v. District Unemployment Comp. Bd., App. D.C., 304 A.2d 14 (1973).

**Continuing base period employer not liable for contribution.** — Unemployment compensation may be charged only against accounts of former employers and not against accounts of continuing employers, and thus the present employer's account could not be charged for unemployment benefits paid to its present part-time employee who had lost his full-time job and had applied for unemployment benefits, simply because it was a base period employer. American Sec. & Trust Co. v. District Unemployment Comp. Bd., App. D.C., 376 A.2d 824 (1977).

**Date for increased contribution rates.** — Provision of § 46-101 defining "computation date" as 30th day of June of each year does not apply to this section authorizing the Board to increase employer contribution rates in certain instances, and such section does not require a finding that the Board cannot increase contribution rates until the beginning of the calendar year beginning after the June 30th determina-

tion. District Unemployment Comp. Bd. v. Security Storage Co., App. D.C., 365 A.2d 785 (1976), cert. denied, 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256 (1977).

**Disqualification case remanded because of decision's ultimate effect on employer's contributions.** — Appellate court remanded case for redetermination of disqualification under § 46-111(b), despite the Board's prior failure to develop sufficient evidence of misconduct, because the employer's contribution to the Unemployment Compensation Fund would be by the claims experience of its employees. Jones v. District of Columbia Unemployment Comp. Bd., App. D.C., 395 A.2d 392 (1978).

**Strict scrutiny of employer's reason for discharge of employee.** — Because an employer's contribution to the Unemployment Compensation Fund is affected by the claims experience of its employees under subsection (C)(10) of this section, the employer's reason for

discharging the employee must be scrupulously examined in all levels of the appeal process. American Univ. v. District of Columbia Dep't of Labor, App. D.C., 429 A.2d 1374 (1981).

**Unemployment compensation benefits do not mitigate damages resulting from breach of employment contract,** since they are not wages, nor can they be deemed the equivalent of wages, even though they are paid out of funds provided by employers. Washington Welfare Ass'n v. Poindexter, App. D.C., 479 A.2d 313 (1984).

**Cited** in Clifton D. Mayhew, Inc. v. Pate, App. D.C., 202 A.2d 786 (1964); District Unemployment Comp. Bd. v. Wm. Hahn & Co., 399 F.2d 987 (D.C. Cir. 1968); Cumming v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 1010 (1978); Anthony v. District of Columbia Dep't of Emp. Servs., App. D.C., 528 A.2d 883 (1987).

## § 46-104. Employer contributions by the District of Columbia.

Appropriations for the District of Columbia shall be available for payment by the District of Columbia of its contributions as an employer, in accordance with the provisions of this chapter. (June 28, 1944, 58 Stat. 530, ch. 300, § 2; 1973 Ed., § 46-303a.)

**Cited** in Anthony v. District of Columbia Dep't of Emp. Servs., App. D.C., 528 A.2d 883 (1987).

## § 46-105. Payment of employer contributions.

(a) The contributions required by § 46-103, or payment in lieu of contributions under § 46-103(h), shall be paid to and collected by the Director, and shall, immediately upon collection, be deposited in the Clearing Account of the Fund. All moneys so required to be paid to and collected by the Director shall be subject to audit by the Office of the Inspector General.

(b)(1) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Board may by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to, wages paid during such quarter with respect to employment; except as provided in § 46-103(h). Wages unpaid solely because of a court order appointing a fiduciary shall be deemed constructively paid when due. Each such return shall be filed with the Director, and shall contain such information and be made in such manner as the Board may by regulation prescribe. No extension of time for filing the return or for payment of the contributions shall be allowed to any employer, except as herein provided.

(2) Employers who employ 250 employees or more in a calendar quarter shall file wage reports by magnetic tape or other machine readable method

approved by the Director. Employers subject to this provision who fail to file wage reports using magnetic tape or other approved method shall be deemed to have failed to file a timely contribution report and shall be subject to the interest and penalty provisions of subsection (c) of this section until such time as the report is filed using magnetic tape or other approved method.

(c)(1) If the contributions or payments in lieu of contributions under § 46-103(h) are not paid when due, there shall be added thereto interest at the rate of 1½% per month or fraction thereof from the date they become due until paid. Interest shall not run against a court-appointed fiduciary when the contributions or payments in lieu of contributions under § 46-103(h) are not paid timely because of a court order.

(2) If contributions are not paid or wage reports are not filed on or before the first day of the second month following the close of the calendar quarters for which they are due or payments in lieu of contributions under § 46-103(h) are not made by that time, there shall be added a penalty of 25% of the amount due. The penalty shall not be less than \$100 and for good cause the penalty may be waived by the Director of the Department of Employment Services.

(d) In the event of the death, dissolution, insolvency, receivership, bankruptcy, composition, or assignment for benefit of creditors of any employer, contributions, or payments in lieu of contributions under § 46-103(h), then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the District, and wages (not exceeding \$600 with respect to any individual) due for services performed within the 3 months preceding such event.

(e) If any employer liable to pay the contribution, or payments in lieu of contributions under § 46-103(h), imposed by § 46-103 neglects and refuses to pay the same after demand, the amount (including any interest) shall be a lien upon all of the property and rights to property, whether real or personal, belonging to such person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Director with the Recorder of Deeds of the District of Columbia. The Director may cause a civil action to be filed in the Superior Court of the District of Columbia to enforce the aforesaid lien by sale of any property or rights to property, whether real or personal, of the delinquent employer affected by said lien. All persons having liens upon or claiming any interest in the property or rights to property sought to be sold, as aforesaid, shall be made parties to the proceedings and brought into court. The Court shall proceed to adjudicate all matters involved therein and finally determine the merits of all claims to a lien upon the property and rights to the property in question, and in all cases where a claim or interest of the Director therein is established, may decree a sale of such property and rights of property by the proper officer of the Court, and any sale made pursuant to such proceedings shall be made subject to any and all valid liens existing against said property or rights to property, at the date of filing of the notice of lien. Such action shall be heard by the Court at the earliest possible date, and shall be entitled to preference on the calendar of the Court over all other civil actions except petitions for judicial review of this chapter. In any suit to enforce a lien

hereunder the owner of the property or rights of property affected by said lien may be allowed to file with the clerk of the Superior Court of the District of Columbia a written undertaking with 2 or more sureties to be approved by the Court, or with corporate surety approved by the Court, to the effect that he and they will pay the judgment that may be recovered and costs which judgment shall be rendered against all the persons so undertaking. Upon the approval of said undertaking the property or rights of property shall be released from such lien. No such undertaking shall be approved by the Court until the owner of the property or rights of property in question shall have given at least 2 days' notice to the Director of his intention to apply to the Courts therefor. Each notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath if required that they are worth over and above all debts and liabilities double the amount of said lien. The Director may appear and object to such approval. When corporate surety is offered and the undertaking bears a certificate of the Clerk of the Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia and has a process agent therein, no notice shall be required. Such an undertaking as above mentioned may be offered before any suit is brought in order to discharge the property from such lien, in which case notice shall be given as aforesaid to the Director and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, except that when the surety is a corporation of the Clerk of said Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia, and has a process agent therein, no notice shall be required; and said undertaking shall be to the effect that the owner of said property or rights of property and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. If such undertaking be approved before any suit is brought, the surety or sureties may be made parties to such suit; if the undertaking be approved after suit is brought, the surety or sureties shall ipso facto become parties to the suit, and in either case the decree of the Court shall be against the surety or sureties as well as the owner. Subject to such regulations as the Council of the District of Columbia may prescribe, the Director shall issue a certificate of release of the lien if the Director finds that the liability for the amount of the contribution, or payments in lieu of contributions under § 46-103(h), imposed, together with all interest in respect thereof, has been satisfied or for any other reason deemed proper by the Director. Such lien shall continue to be valid for a period of 10 years from the date of filing of the notice thereof with the Recorder of Deeds of the District of Columbia, unless the same shall have been released of record, as hereinbefore provided. The foregoing remedy of the Director shall be cumulative and no action taken by the Director shall be or be construed to be an election on the part of the Director to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

(f) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is a part of its usual

trade, occupation, profession, or business, said employing unit shall report to the Director, in accordance with applicable regulations, the name and address of each and every such contractor or subcontractor so employed. Unless such report is made the employing unit shall for all purposes of the chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged solely in performing such employment. Any employing unit who thus becomes liable for and pays contributions with respect to individuals in the employ of any such contractor or subcontractor, however, may recover same from such contractor or subcontractor.

(g) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to \$.01.

(h) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by the Director or Director's designated agent in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection (including collection thereof by distress), or by civil action in the name of the Director, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest or penalty thereon from an employer shall be heard by the Court at the earliest possible date and shall be entitled to preference upon the calendar of the Court over all other civil actions except petitions for judicial review of this chapter. This subsection shall not be construed to mean that the Director shall be required to use only this means of collecting delinquent contributions but the Director may use any other legal method which the Director deems advisable.

(i) If, not later than 3 years after the date on which any contributions (or payments in lieu of contributions under § 46-103(h)) or interest thereon were paid, an employing unit which has paid such contributions (or payments in lieu of contributions under § 46-103(h)) or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution with subsequent contribution payments (or payments in lieu of contributions under § 46-103(h)) or for a refund thereof because such adjustment cannot be made, and the Director shall determine that such contributions (or payments in lieu of contributions under § 46-103(h)) or interest on any portion thereof was erroneously collected, the Director shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments (or payments in lieu of contributions under § 46-103(h)) by it, or if such adjustment cannot be made the Director shall refund said amount, without interest, from the Clearing Account or Benefit Account upon checks issued by the Director or the Director's duly authorized agent. For like cause and within the same period, adjustment or refund may be so made on the Director's own initiative. Should benefits have been paid based upon work records filed by the employing unit, claiming an adjustment or refund, such benefit should be disregarded for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time

of the adjustment or refund, based upon records filed with this Director by such employing unit, shall to that extent be allowed and shall not be deemed to have been paid erroneously.

(j) The Director in the Director's discretion, whenever the Director may deem it administratively advisable, may charge off of the Director's books any unpaid account due the Director or any credit due an employer who has been out of business for a period of more than 3 years. Whenever an account is charged off by the Director, there shall be placed in the records of the Director a reason for such action.

(k) The Council of the District of Columbia, or the executive officer provided for under § 46-116(b), with the consent of the Council, may prescribe the extent, if any, to which any ruling, regulation, or decision relating to this chapter shall be applied without retroactive effect.

(l)(1) The Director may compromise any civil case arising under this chapter. Whenever a compromise is made by the Director in each such case, there shall be placed in the records of the Director the opinion of an attorney of the Director with the reasons therefor, including a statement of:

(A) The amount of the contributions, or payments in lieu of contributions under § 46-103(h), due;

(B) The amount of interest due on the same; and

(C) The amount actually paid in accordance with the terms of the compromise.

(2) There is hereby established in the Treasury of the United States a special escrow account into which the Director shall deposit all funds received in connection with an offer of compromise. Such funds shall be kept in such escrow account until final action is had upon the offer of compromise and shall not be subject to offset for any indebtedness whatsoever. In the event the compromise is approved, the funds shall be transferred to the District Unemployed Compensation Funds. In the event the compromise is disapproved, the funds shall be immediately returned to the individual who made the offer of compromise.

(m)(1) If any employer liable to pay contributions or payments in lieu of contributions under § 46-103(h) files a wage report for the purposes of determining the amount of contributions due under this chapter but fails to pay contributions, interest, or penalties, the Director may assess the amount of contributions, interest, or penalties due on the basis of the information submitted and shall give written notice of such assessment to the employer. In the event such report is subsequently found to be incorrect additional assessments may be made, notwithstanding paragraph (4) of this subsection.

(2) If an employer liable to pay contributions, or payments in lieu of contributions under § 46-103(h), fails to file, on or before the prescribed date, a wage report for purposes of determining the amount of contributions due under this chapter or if such wage report when filed is deemed by the Director to be incorrect or insufficient, then the employer shall file a correct and sufficient report within 10 days after the Director requires same by written notice, and upon failure to do so, the Director shall assess the amount of contributions, interest, penalties due from such employer on the basis of such

information as the Director may be able to obtain, and shall give written notice of such assessment to the employer.

(3) If the Director believes that the collection of any contribution, payment in lieu of contribution, interest, or penalty under the provisions of this chapter will be jeopardized by delay, the Director may, whether or not the time prescribed in this chapter for the filing of reports or the payment of contributions has expired, immediately assess such contributions, payment in lieu of contributions, interest, or penalty and shall give written notice of such assessment to the employer.

(4) Assessments made pursuant to this subsection shall be final and irrevocably fix the amount of contributions, interest, or penalties due and payable unless the employer shall file an appeal to the Director, pursuant to duly prescribed regulations, within 15 days of the mailing of such determination or the Director on the Director's own motion reduces the amount of the assessment; provided, however, that any employer appealing an assessment shall first pay such contributions, interest and penalties. After a hearing, the appeal tribunal shall enter a decision affirming, modifying, or setting aside the assessment and shall promptly give the employer written notice of its decision.

(n) The contributions, payments in lieu of contributions, interest, and penalties thereon required by this chapter shall become, from the time due and payable, a personal debt of the person liable to pay the same to the Director. For purposes of this chapter, the term "person" shall include any officer of a corporation having 35 or fewer shareholders, any employee of such corporation responsible for the payment of contributions, interest, and penalties, and any member of a partnership or association responsible for the payment of contributions, payments in lieu of contributions, interest, and penalties, and any member of a partnership or association responsible for the payment of contributions, payments in lieu of contributions, interest, and penalties.

(o) In addition to all other methods granted to the Director to effect the collection of delinquent contributions payment in lieu of contributions, interest, and penalties, the Director shall have the authority to seek the suspension or cancellation of any business, professional, alcoholic beverage, occupancy, or other license held by any employer subject to this chapter. (Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; July 2, 1940, 54 Stat. 731, ch. 524, § 1; June 4, 1943, 57 Stat. 108, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 10, 1952, 66 Stat. 543, 547, ch. 649, §§ 2(b), 6; Aug. 31, 1954, 68 Stat. 992, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 14; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(44)(B); Dec. 22, 1971, 85 Stat. 767, Pub. L. 92-211, § 2(27)-(34); 1973 Ed., § 46-304; Mar. 16, 1982, D.C. Law 4-86, § 2(c), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(e), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(i), (j), 30 DCR 1371; Mar. 13, 1985, D.C. Law 5-124, § 2(c), 31 DCR 5165; Mar. 27, 1993, D.C. Law 9-260, §§ 103, 204, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 103, 204, 40 DCR 5420.)

**Cross references.** — As to refund of taxes, see § 47-1317 et seq.

ferred to in §§ 46-101, 46-103, 46-107, 46-109 and 46-117.

**Section references.** — This section is re-

**Legislative history of Law 4-86.** — See note to § 46-103.

**Legislative history of Law 4-147.** — See note to § 46-103.

**Legislative history of Law 5-3.** — See note to § 46-102.1.

**Legislative history of Law 5-124.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Expiration of Law 5-3.** — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

**References in text.** — Section 46-116(b), referred to in subsection (k), was repealed Sept. 24, 1993, by D.C. Law 10-15, § 213.

**No statute of limitations on Board's recovery of contributions.** — Compulsory unemployment contributions are "taxes" which are expended for a public purpose, that is, the

relief of unemployment; and an action brought by the Board to recover such contributions is one asserting a public right, and therefore no statute of limitations would run against the Board in such an action in view of the Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Constr. Co. v. McLaughlin*, App. D.C., 151 A.2d 535 (1959).

**Employer's recovery of contributions paid under protest not permitted.** — Where the Board granted an exemption from liability for unemployment contributions, but the employer had not changed its position and was not injured by reason of the Board's act, the employer was not entitled to recover contributions previously paid under protest, on the grounds of "estoppel" and "res judicata" since the Board could reverse an erroneous ruling retrospectively as well as prospectively. *National Rifle Ass'n of Am. v. Young*, 134 F.2d 524 (D.C. Cir. 1943).

**Cited** in *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 528 A.2d 883 (1987).

## § 46-106. Service of process on nonresident employers.

Any nonresident employer, for whom services constituting employment subject to this chapter are performed, shall be deemed to have appointed the Director of the Department of Transportation of the District of Columbia as his true and lawful attorney upon whom may be served all processes in any action or proceedings against such nonresident arising out of, or incident to, this chapter, and said employment shall be a signification that any such process against him served, as herein provided, shall have the same effect and validity as if served on him personally in the District of Columbia. Service of such process shall be made by leaving a copy thereof (with a fee of \$2) in the hands of the Director of the Department of Transportation of the District of Columbia, or other persons in charge of his office, and such service shall be sufficient service upon such nonresident; provided, that notice of such service and a copy of the process are forthwith sent, by registered mail, by the plaintiff to the defendant and the defendant's return receipt attached to the writ and entered with the initial pleading. The court in which the action is pending may order such extensions as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least 20 days shall have elapsed after the notice of such service has been sent to the defendant as hereinabove prescribed. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 5; June 4, 1943, 57 Stat. 111, ch. 117; 1973 Ed., § 46-305.)

**Department of Vehicles and Traffic abolished.** — The Department of Vehicles and Traffic, including the Director, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Co-

lumbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 54 of the Board of Commissioners, dated June 30, 1953, as amended September 1, 1953, established a Department of Vehicles and Traffic, headed by a

Director, a Board of Revocation and Review of Hackers' Identification Cards, a Motor Vehicle Parking Agency, and a Commissioners' Traffic Advisory Board; prescribed the functions thereof; and abolished the previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency. Reorganization Order No. 54 was repealed and replaced by Organization Order Nos. 105, 106, 107, and 108, dated May 17, 1955. Organization Order No. 105 continued the Department of Vehicles and Traffic and prescribed the functions thereof. The Department of Vehicles and Traffic was redesignated as the Department of Motor Vehicles by Commissioners' Order No. 58-919, dated June 10, 1958. The Department of Highways

was replaced by Reorganization Order No. 58-1116, dated July 15, 1958, which Order established the Department of Highways and Traffic. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Plan No. 2 of 1975 combined the Department of Motor Vehicles and the Department of Highways and Traffic to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

**Cited** in Anthony v. District of Columbia Dep't of Emp. Servs., App. D.C., 528 A.2d 883 (1987).

## **§ 46-107. Deposit in Unemployment Trust Fund; contents of Fund; balance.**

(a) All moneys received in the District Unemployment Fund from sources other than the Unemployment Trust Fund, except as provided in § 46-105(i) and § 46-101(2)(E)(iv), shall be immediately paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund, to be held in trust for the District upon the terms and conditions provided in § 1104 of Title 42, United States Code.

(b) The Fund shall consist of:

- (1) All employer contributions and payments in lieu of contributions collected under this chapter;
- (2) Interest earned upon the money in the Fund;
- (3) Any property or securities acquired through the use of money belonging to the Fund;
- (4) All earnings of such property or securities;
- (5) All money credited to the District account in the Unemployment Trust Fund pursuant to § 1103 of Title 42, United States Code; and
- (6) All other money received for the Fund from any other source.

(c) In determining the balance in the Fund for the purpose of § 46-103(c)(4)(B), there shall be excluded:

- (1) Any amount credited to the District's account in the Unemployment Trust Fund pursuant to § 1103 of Title 42, United States Code which has been appropriated for expenses of administration, whether or not such amount has been withdrawn from the Fund;
- (2) Any amount paid in advance into the Fund by an employer under any type of coverage pursuant to which reimbursement of benefits paid is permitted in lieu of contributions required of employers;
- (3) Any amount paid in advance into the Fund by the federal government under the provisions of any federal law that requires or permits the District to pay benefits from the Fund and provides for advances by the federal government or reimbursement of all or part of such benefits; and

(4) Any estimated or other contributions not legally due and payable with respect to the calender quarter ending September 30th of the year for which the balance in the Fund is determined.

(d) In determining the balance in the Fund for purposes of § 46-103(c)(4)(B), there shall be included negative entries corresponding to any amounts owed to the federal unemployment account as a result of advances to the Fund in accordance with Title XII of the Social Security Act (42 U.S.C. §§ 1321 to 1324). (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 6; June 4, 1943, 57 Stat. 112, ch. 117; 1973 Ed., § 46-306; Mar. 3, 1979, D.C. Law 2-129, § 2(r), 25 DCR 2451.)

**Section references.** — This section is referred to in §§ 46-103 and 46-117.

**Legislative history of Law 2-129.** — See note to § 46-101.

**Cited** in Anthony v. District of Columbia Dep't of Emp. Servs., App. D.C., 528 A.2d 883 (1987).

## § 46-108. Determination of amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the Benefit Account of the District Unemployment Fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b) An individual's "weekly benefit amount" shall be an amount equal to one twenty-sixth (computed to the next higher multiple of \$1) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, with such other following limitations. The Director shall determine annually a maximum weekly benefit amount by computing  $66\frac{2}{3}\%$  of the average weekly wage paid to employees in insured work, and shall on or before January 1st of the calendar year in which it shall be effective announce by publication in at least 1 newspaper of general circulation in the District, the maximum weekly benefit amount so determined. Such computation shall be made by determining total wages reported as paid for insured work by employers in each 12-month period ending June 30th and dividing said total wages by a figure resulting from 52 times the average of mid-month employment reported by employers for the same period. For the period from March 30, 1962, to December 31, 1962, the maximum weekly benefit amount shall be determined and announced by the Director in accordance with the foregoing formula on the basis of wages and employment in the 12-month period ending June 30, 1961. The maximum weekly benefit amount so determined and announced for a calendar year shall apply only to those claims filed in that year qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in said amount for a subsequent calendar year. If the maximum weekly benefit amount is not a multiple of \$1, then said maximum weekly benefit amount shall be computed to the next multiple of \$1.

(3)(A) Effective January 1, 1986, through December 31, 1987, the maximum weekly benefit amount shall be \$250.

(B) Effective January 1, 1988, and for each calendar year thereafter, the maximum weekly benefit amount shall be determined by the Director of the Department of Employment Services ("Director") by computing 50% of the average weekly wage paid to employees in insured work, unless the Director certifies to the Council on or before September 30th of the preceding year that the financial condition of the District Unemployment Compensation Trust Fund would be worsened by adoption and implementation of a maximum weekly benefit amount determined by that method. Any such certification by the Director shall be accompanied by a recommended maximum weekly benefit amount which shall not be less than the maximum weekly benefit amount then in effect and which shall become the maximum weekly benefit amount for the next calendar year, unless the Council passes a resolution disapproving the Director's recommendation within 45 days after its receipt.

(C) If the Council passes a resolution of disapproval the maximum weekly benefit amount then in effect shall continue in effect for the next calendar year.

(D) Each year the Director shall, on or before January 1st of the calendar year in which it shall be effective, announce by publication in at least 1 newspaper of general circulation in the District, the maximum weekly benefit amount.

(E) The computation of the average weekly wage paid to employees in insured work shall be made by determining total wages reported as paid for insured work by employers in each 12-month period ending March 31st and dividing said total wages by a figure resulting from 52 times the average of mid-month employment reported by employers for the same period.

(F) The maximum weekly benefit amount, however determined, announced for a calendar year shall apply only to those claims filed in that year qualifying for the maximum weekly benefit amount. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum amount for any subsequent calendar year.

(G) If the maximum weekly benefit amount, however computed, is not a multiple of \$1, then it shall be rounded down to the next lower multiple of \$1.

(c) To qualify for benefits an individual must have:

(1) Been paid wages for employment of not less than \$1300 in 1 quarter in his base period;

(2) Been paid wages for employment of not less than \$1950 in not less than 2 quarters in such period; and

(3) Received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages actually received in the quarter in such period in which his wages were the highest.

If a claimant satisfies the above except that he received wages over the amount necessary to become eligible for maximum benefits, in the quarter in which his wages were the highest, then the additional wages received in such

quarter shall not be considered in determining eligibility. Notwithstanding the provisions of paragraph (3) of this subsection, any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such paragraph, may qualify for benefits, if the difference between the amounts so required to have been received and the total amount of his wages during such period does not exceed \$70, but the amount of his weekly benefit, as computed under subsection (b) of this section, shall be reduced by \$1 if such difference does not exceed \$35, or by \$2 if such difference is more than \$35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year shall not be available for benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, performed services for which he received wages for employment as defined in this chapter, in an amount equal to at least 10 times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received or applied for with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer; except that no reduction shall be made under this sentence for any amount received under Title II of the Social Security Act. For any week beginning after March 31, 1980, benefits payable for any week to an individual who has applied for or is receiving a retirement pension or annuity under a public or private retirement plan, including any such sum provided under Title II of the Social Security Act, shall, under regulations prescribed by the Board, be reduced (but not below zero) by the prorated weekly amount of such retirement pension or annuity which is reasonably attributable to such week. An amount received with respect to a period other than a week shall be prorated by weeks. When an individual's weekly benefit amount is reduced by a pension, the individual's maximum weekly benefit amount shall be deducted from his total amount of benefits determined pursuant to subsection (d) of this section.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 26 times his weekly benefit amount or 50% of the wages for employment paid to such individual by employers during his base period whichever is the lesser; provided, that the maximum duration of benefits determined on any initial claim made prior to March 15, 1983, shall continue to be 34 weeks during the benefit year to which the initial claim relates. Such total amount of benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

(e) Any individual who is unemployed in any week as defined in § 46-101(5) and who meets the conditions of eligibility for benefits of § 46-110 and is not disqualified under the provisions of § 46-111 shall be paid with respect to such week an amount equal to the individual's weekly benefit amount less any earnings payable to the individual with respect to such week deductible in accordance with the following formula: \$20 will be added to the weekly benefit amount; from the resulting sum will be subtracted 80% of any earnings

payable to the individual for such week. The resulting benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1. In no event shall the amount paid for any week exceed the individual's established weekly benefit amount.

(f) In addition to the benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week \$5 for each dependent relative, but not more than \$20 shall be paid to an individual as dependent's allowance with respect to any 1 week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than the established maximum benefit amount. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section.

(g) Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

(1) As used in this subsection, unless the context clearly requires otherwise:

(A) "Extended benefit period" means a period which:

(i) Begins with the third week after a week in which a state "on" indicator occurs; and

(ii) Ends with either of the following weeks, whichever occurs later:

(I) The third week after the first week for which there is a state "off" indicator; or

(II) The 13th consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to the District.

(B) For weeks commencing after September 25, 1982, there is a state "on" indicator for the District for a week if the rate of insured unemployment under this chapter for the period consisting of such week and the immediately preceding 12 weeks:

(i) Equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

(ii) Equaled or exceeded 5%; provided, that with respect to benefits for weeks of unemployment beginning on September 26, 1982, the determination of whether there is a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if:

(I) This subparagraph did not contain sub subparagraph (i) thereof; and

(II) The figure "5" contained in sub subparagraph (ii) thereof was "6": except, that notwithstanding any such provision of this subsection any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

(C) There is a state "off" indicator for the District for a week if, for the period consisting of that week and the immediately preceding 12 weeks, either sub subparagraph (i) or (ii) of subparagraph (B) of this paragraph was not satisfied.

(D) "Rate of insured unemployment", for purposes of subparagraphs (B) and (C) of this paragraph, means the percentage derived by dividing: (i) the average weekly number of individuals filing claims for regular benefits in the District for weeks of unemployment with respect to the most recent 13-consecutive-week period as determined on the basis of reports to the Secretary of Labor, by (ii) the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(E) "Regular benefits" means benefits payable to an individual under this chapter or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) other than extended benefits.

(F) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) payable to an individual under the provisions of this subsection for weeks of unemployment in his eligibility period.

(G) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended period, any weeks thereafter which begin in a period.

(H) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such a week, all of the regular benefits that were available to him under this chapter or any state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 of Title 5, United States Code) in his current benefit year that includes such a week; provided, that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such a week, has no, or insufficient wages on the basis of which he established a new benefit year that would include such a week; and

(iii)(I) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the Secretary of Labor; and

(II) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(I) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under § 3304 of the Internal Revenue Code of 1954.

(J) The provisions of subparagraphs (A)-(G) of this paragraph shall not apply to any time these provisions are suspended temporarily or permanently by federal law. If these provisions are suspended by federal law, the provisions of this chapter which apply to claims for and the payment of regular benefits shall apply to claims for and the payment of extended benefits.

(2) Except when the result would be inconsistent with the other provisions of this subsection, as provided in the regulations of the Board, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Director finds that with respect to such week:

(A) He is an "exhaustee" as defined in paragraph (1)(H) of this subsection;

(B) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(C) Notwithstanding any other provisions of this paragraph, an individual shall not be eligible for extended benefits if his monetary eligibility for regular benefits was based upon the total base period wages that did not exceed his highest quarterly wages by at least 1½ times.

(4) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly basic or augmented benefit amount, whichever is appropriate, payable to him during his applicable benefit year.

(5)(A) The total extended benefit amount payable to any eligible individual with respect to his applicable year shall be the least of the following amounts:

(i) Fifty percent of the total amount of regular benefits (including dependents' allowances) which were payable to him under this chapter in his applicable benefit year;

(ii) Thirteen times his weekly benefit amount (including dependents' allowances) which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or

(iii) Thirty-nine times his weekly benefit amount (including dependents' allowances) which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this chapter with respect to the benefit year.

(B) For purposes of this paragraph, the total regular benefit amount shall be that amount (including dependents' allowances) provided in the individual's monetary determination or the amount of regular benefits (including dependents' allowances) actually received, whichever is the greater.

(C) Notwithstanding any other provisions of this paragraph, if the benefit year of any individual ends within an extended benefit period, the

remaining balance of extended benefits that such an individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(6)(A) Whenever an extended benefit period is to become effective in the District (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in the District as a result of state and national "off" indicators, the Director shall make an appropriate public announcement as provided in the regulations of the Board.

(B) Computations required by the provisions of paragraph (1)(F) of this subsection shall be made by the Director in accordance with regulations prescribed by the Secretary of Labor.

(7)(A) In weeks commencing after June 30, 1981, except as provided in subparagraph (B) of this paragraph, an individual shall not be eligible for extended benefits for such week if:

(i) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate payment plan; and

(ii) No extended benefit period is in effect for such week in such state.

(B) Subparagraph (A) of this paragraph shall not apply with respect to the first 2 weeks for which extended benefits are payable (as determined without regard to this paragraph) pursuant to an interstate benefit payment plan to the individual with respect to the benefit year.

(8)(A) Notwithstanding the provisions of subparagraph (B) of this paragraph, an individual shall be ineligible for payment of extended benefits for any week of unemployment commencing after March 31, 1981, in his eligibility period if the Director finds that during such period:

(i) He failed to accept any offer of suitable work (as defined under subparagraph (C) of this paragraph) or failed to apply for any suitable work to which he was referred by the Director; or

(ii) He failed to actively engage in seeking work as prescribed under subparagraph (E) of this paragraph.

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subparagraph (A) of this paragraph shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than 10 times the extended weekly benefit amount.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided, that the gross average weekly remuneration payable for the work must:

(i) Exceed the sum of:

(I) The individual's extended weekly benefit amount as determined under paragraph (4) of this subsection plus;

(II) The amount, if any, of supplemental unemployment benefits (as defined in 26 U.S.C § 501(c)(17)(D)) payable to such individual for such week; and

(ii) Pay wages not less than the higher of:

(I) The minimum wage provided by 29 U.S.C. § 206 without regard to any exemption; or

(II) The applicable state or local minimum wage; provided, further, that no individual shall be denied extended benefits for failure to accept an offer of suitable work or apply for any job which meets the definition of suitability as described above if: (I) the position was not offered to such individual in writing or was not listed with the employment service; (II) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 46-111(c) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subparagraph; or (III) the individual furnishes satisfactory evidence to the Director that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in § 46-111(c) without regard to the definition specified by this subparagraph.

(D) Notwithstanding the provisions of subparagraph (B) of this paragraph to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by 26 U.S.C. § 3304(a)(5) and set forth under § 46-111(d)(1).

(E) For the purposes of subparagraph (A)(i) of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subparagraph (C) of this paragraph.

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits or extended benefits under this section because the individual voluntarily left his most recent work without good cause connected with the work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work, unless such individual has returned to work, has been employed at least 10 weeks, and has earned an amount equal to or greater than 10 times his weekly benefit.

(H) During the extended benefit period, the eligibility requirements of this paragraph shall also apply to those weeks of benefits for which sharable compensation is payable under the terms of 26 U.S.C. § 3304.

(h) Effective October 1, 1983, in the calculation of an individual's weekly benefit amount, all amounts shall be rounded down to the next lower dollar.

(i)(1) For the purposes of this subsection, the term:

(A) "Additional benefits period" means a period which:

(i) Begins with the third week after a week in which the rate of insured unemployment, as defined by subparagraph (B) of this paragraph, is 3.75% or higher; provided, that there are no federally assisted programs in effect in the District which provide benefits to claimants who have exhausted their regular benefits; and

(ii) Ends with whichever of the following weeks occurs first:

(I) The 11th consecutive week of such period; or

(II) The week immediately preceding the first week in which any federal program is in effect in the District which provides benefits to claimants who have exhausted their regular benefits; and

(iii) Provided that no additional benefits period may begin as set forth in sub-subparagraph (i) of this subparagraph before the 14th week following the expiration of a prior additional benefits period.

(B) "Rate of insured unemployment" means the percentage, computed to 2 decimal points, derived by dividing: (i) the average weekly number of individuals filing claims for regular benefits, extended benefits, additional benefits, and any supplemental federal unemployment benefits for weeks of unemployment with respect to the most recent 13-week period by (ii) the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(C) "Regular benefits" means benefits payable to an individual under this chapter or under any state law other than extended benefits.

(D) "Extended benefits" means benefits (including benefits payable to federal civilian employees and ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) payable to an individual under the provisions of subsection (a) of this section for weeks of unemployment in the individual's extended benefit eligibility period.

(E) "Additional benefits eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an additional benefits period and, if the individual's benefit year ends during an additional benefits period, any weeks thereafter which begin in an additional benefit period.

(F) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's additional benefits eligibility period:

(i) Has received, prior to such week, all of the requested benefits and all of the extended benefits, if any, there were available to him or her under this chapter or any state law in the individual's current benefit year that includes such week; provided, that for the purposes of this subparagraph, an individual is deemed to have received all of the regular and extended benefits that were available to him or her although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular or extended benefits; provided further, that for the purposes of this subparagraph, an individual shall be deemed to have received

all of the regular and extended benefits that were available to him or her although as a result of having earned wages he or she had received by the end of his or her benefit year all of the regular and extended benefits to which he or she would otherwise have been entitled; and

(ii) The individual has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations by the Secretary of Labor for the federally assisted extended benefits program and the federally supported supplemental compensation program; and

(iii) The individual has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee.

(G) "Cooperating employer" means an employer which has voluntarily agreed to, without compensation, assist the Director in interviewing individuals who apply for phase 2 additional benefits and in evaluating the job readiness of such individuals.

(H) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under § 3304 of the Internal Revenue Code of 1954.

(2) There is established an Additional Benefits Program which shall consist of 5 weeks of phase 1 benefits, followed by 5 weeks of phase 2 benefits. During the first 5 weeks, in order to qualify for the second 5 weeks of additional benefits, the claimant must demonstrate that he or she is actively seeking employment. There shall be no waiting period between the expiration of regular benefits and the beginning of additional benefits. The Additional Benefits Program shall be financed by the revenue collected from the additional tax authorized by § 46-103(c)(8)(C)(i). Except when the result would be inconsistent with the other provisions of this subsection, as provided in the regulations of the Board, and except as otherwise provided in this subsection, the provisions of this chapter which apply to claims for and the payment of regular benefits shall apply to claims for and the payment of additional benefits.

(A) The weekly additional benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to his or her regular benefit amount, including any dependents' allowances for which he or she was eligible, payable to him or her during his or her applicable benefit year.

(i) Phase 1 of the additional benefits program shall consist of the weeks during which the individual receives one-half of the total additional benefit amount to which he or she is entitled; provided, that any weekly additional benefit payment which would bring the individual's cumulative total additional benefits received to more than one-half of the total additional benefit amount to which the individual is entitled with respect to his or her applicable benefit year shall be paid to the individual and included in his or her

phase 1 additional benefits if the cumulative total of the additional benefits paid to the individual prior to such payment were less than one-half of the total additional benefit amount to which he or she is entitled with respect to his or her applicable benefit year.

(ii) Phase 2 of the additional benefits program shall consist of the weeks during which the individual is eligible to receive the remaining balance of additional benefits not received during phase 1.

(B) An individual shall be eligible to receive phase 1 additional benefits with respect to any week of unemployment in his or her eligibility period only if the Director finds that with respect to such week:

(i) The individual is an “exhaustee” as defined in paragraph (1)(F) of this subsection;

(ii) The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming additional benefits, including not being subject to a disqualification for the receipt of regular benefits; and

(iii) The individual provides tangible evidence that he or she was engaged during such week in a systematic and sustained effort to obtain work by making contact with at least 3 new employers and seeking work during at least 3 days, except:

(I) An individual who during such week was attending a training or retraining course with the approval of the Director; and

(II) An individual who during such week was in training approved under § 236(a)(1) of the Trade Act of 1974; provided, that he or she did not voluntarily leave suitable employment, as defined in § 46-111(i)(2), to enter such training.

(C) In order to become eligible to receive phase 2 additional benefits, the individual shall:

(i) Apply for phase 2 additional benefits at the public employment office designated by the Director; and

(ii) Provide, when applying, the following information pertaining to 5 employer contacts he or she made during phase 1:

(I) The name and address of the employer;

(II) The position sought;

(III) The date of the contact;

(IV) The name of the employer's representative contacted; and

(V) The results of the contract; and

(iii) Report as instructed by the Director to a cooperating employer in his or her occupational category for an assessment of his or her job readiness.

(D) An individual shall be eligible to receive phase 2 additional benefits with respect to any week of employment in his or her eligibility period only if the Director finds that with respect to such week:

(i) The individual meets the requirements of subparagraphs (B)(i) and (ii) of this paragraph for the receipt of phase 1 additional benefits; and

(ii) The individual provides tangible evidence that she or he was engaged during such week in a systematic and sustained effort to obtain work by making contact with at least 5 new employers and seeking work during at least 3 days, except as provided in subparagraph (B)(iii) of this paragraph.

(E) The Director shall refer to appropriate job counselling or training or retraining course each individual who is judged by a cooperating employer not to be job ready, and the Director shall refer to appropriate job openings each individual who is judged by a cooperating employer to be job ready.

(F) Whenever an additional benefits period is to become effective or is to be terminated, the Director shall make an announcement to that effect by publication in a newspaper of general circulation, as provided in the regulations of the Board. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7; July 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 48, Pub. L. 87-424, §§ 5, 6, 7; Dec. 22, 1971, 85 Stat. 768, Pub. L. 92-211, § 2(35)-(37); 1973 Ed., § 46-307; May 13, 1975, D.C. Law 1-2, § 1(2), 21 DCR 3941; Mar. 3, 1979, D.C. Law 2-129, § 2(s)-(v), 25 DCR 2451; Sept. 16, 1980, D.C. Law 3-102, § 7, 27 DCR 3630; Feb. 4, 1982, D.C. Law 4-64, § 2, 28 DCR 4936; Mar. 16, 1982, D.C. Law 4-86, § 2(d), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(f), (g), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(k)-(o), 30 DCR 1371; Aug. 2, 1983, D.C. Law 5-24, § 8, 30 DCR 3341; Aug. 10, 1984, D.C. Law 5-102, § 2(c)-(e), 31 DCR 2902; Mar. 13, 1985, D.C. Law 5-124, § 2(d), 31 DCR 5165; Mar. 14, 1985, D.C. Law 5-159, § 7, 32 DCR 30; Mar. 16, 1988, D.C. Law 7-91, § 2(b), 35 DCR 712; Mar. 27, 1993, D.C. Law 9-260, §§ 104, 205, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 104, 205, 40 DCR 5420; Feb. 5, 1994, D.C. Law 10-68, § 40(b), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 49(a), 41 DCR 5193.)

**Cross references.** — As to authority of Board to prescribe rules and regulations, see § 46-114.

**Section references.** — This section is referred to in §§ 46-101, 46-103, 46-110, 46-111, 46-114, and 46-117.

**Effect of amendments.** — D.C. Law 10-68 substituted “§ 236(a)(1)” for “§ 235(a)(1)” in (i)(2)(B)(iii)(II).

D.C. Law 10-255 made technical amendments to § 104 of Law 10-15 and validated a previously made subsection designation change in (g).

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 3-102.** — Law 3-102, the “Closing of a Public Alley in Square 568, Unemployment Compensation, Motor Vehicle Finance Charges, and Interstate Highway System Withdrawal Act of 1980,” was introduced in Council and assigned Bill No. 3-283, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-224 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-64.** — Law 4-64, the “District of Columbia Unemployment Compensation Act Amendments Act of 1981,” was introduced in Council and assigned Bill

No. 4-269, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 13, 1981, and October 27, 1981, respectively. Signed by the Mayor on November 4, 1981, it was assigned Act No. 4-110 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-86.** — See note to § 46-103.

**Legislative history of Law 4-147.** — See note to § 46-103.

**Legislative history of Law 5-3.** — See note to § 46-102.1.

**Legislative history of Law 5-24.** — Law 5-24, the “Technical and Clarifying Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-102.** — See note to § 46-102.

**Legislative history of Law 5-124.** — See note to § 46-103.

**Legislative history of Law 5-159.** — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 7-91.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-68.** — See note to § 46-101.

**Legislative history of Law 10-255.** — See note to § 46-101.

**Effective date.** — Section 3(b) of D.C. Law 7-91 provided that the amendments to §§ 46-103 and 46-108 shall be effective beginning January 1, 1988.

**Expiration of Law 5-3.** — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

**References in text.** — Title II of the Social Security Act, referred to in subsection (c), is codified as 42 U.S.C. §§ 401 to 433.

Chapter 85 of Title 5, United States Code, referred to in subsections (g) and (i), is 5 U.S.C. § 8501 et seq.

The Railroad Unemployment Insurance Act, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is codified as 45 U.S.C. § 351 et seq.

The Trade Expansion Act of 1962, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is P.L. 87-794, codified primarily as 19 U.S.C. § 1801 et seq. and 19 U.S.C. § 1901 et seq.

The Automotive Products Trade Act of 1965, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is codified as 19 U.S.C. §§ 1202 and 2001 et seq.

Section 236(a)(1) of the Trade Act of 1974, referred to in (i)(2)(B)(iii)(II), is codified as 19 U.S.C. § 2296(a)(1).

"Paragraph (1)(F) of this subsection," referred to in subsection (g)(6)(B), should probably be paragraph (1)(D).

"Section 3304 of the Internal Revenue Code of 1954," referred to in (i)(1)(H), is codified as 26 U.S.C. § 3304.

**Editor's notes.** — Subsection (b) of this section, as a result of the expiration of D.C. Law 5-3, which had designated its provisions as paragraphs (1) and (2), and amendment by D.C. Law 5-124, which had added a paragraph (3), presently consists of an undesignated paragraph and a paragraph (3).

In subsection (i)(2)(C)(ii)(IV), a duplicate "of" has been deleted preceding "of the employer", to correct an error in D.C. Law 5-124.

**Clear intent of this section was to avoid duplicate compensation,** and the method

chosen by the legislature to achieve this purpose was to reduce an award of unemployment benefits by the amount of any retirement pension or annuity, whether the retirement was voluntary or involuntary. *Subbuskey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 480 (1983).

**"Paid,"** in subsection (b), means wages actually received within a given quarter of the base period. *Jaime v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 486 A.2d 692 (1985).

**"Wages actually received."** — Moneys withheld for taxes in high quarter are properly included as "wages actually received" in the high quarter for purposes of requirement of subsection (c)(3) of this section. *Vedder v. District Unemployment Comp. Bd.*, App. D.C., 360 A.2d 485 (1976).

**Denial of benefits to employees of exempt organizations.** — A discriminatory classification of employees, created by the Congress' legitimate interest in exempting charitable organizations from the payment of unemployment taxes, by denying benefits to employees of exempt organizations, is reasonable and does not violate due process. *Von Stauffenberg v. District Unemployment Comp. Bd.*, App. D.C., 269 A.2d 110 (1970), aff'd, 459 F.2d 1128 (D.C. Cir. 1972).

**Reduction of benefits due to retirement pension.** — The provision of this section that unemployment benefits payable to an individual shall be reduced by any amount received as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer is not violative of equal protection. *Rogers v. District Unemployment Comp. Bd.*, App. D.C., 290 A.2d 586 (1972).

Retired employee was not entitled to receive unemployment benefits, where his monthly annuity exceeded his potential weekly benefit amount, notwithstanding his claim that the initial payments made to the employee from the retirement fund represented a return of his own contributions. *Rogers v. District Unemployment Comp. Bd.*, App. D.C., 290 A.2d 586 (1972).

The computation of unemployment benefits under this section is based upon receipt of an offsetting pension, not upon the purpose to which that money may be put or the right of some other person to a share of it. *Subbuskey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 480 (1983).

**Federal government deemed a single employer.** — For purposes of the provision of this section that unemployment benefits payable to an individual shall be reduced by any amount received with respect to such week as a retirement pension or annuity provided or contributed to by any base period employer, the federal government is to be deemed a single

employer when a claimant is retired from military service and the job from which he is seeking unemployment compensation was civil service. *Billings v. District Unemployment Comp. Bd.*, App. D.C., 367 A.2d 116 (1976).

**Cited** in *Gordon v. District Unemployment Comp. Bd.*, App. D.C., 402 A.2d 1251 (1979); *Brice v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 472 A.2d 406 (1984); *Davis v.*

District of Columbia Dep't of Emp. Servs., App. D.C., 481 A.2d 128 (1984); *DaCosta v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 493 A.2d 312 (1985); *Cobo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 501 A.2d 1278 (1985); *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 528 A.2d 883 (1987); *Nelson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 530 A.2d 1193 (1987).

## § 46-109. Payment of benefits and refunds.

Moneys shall be requisitioned from the District of Columbia account in the Unemployment Trust Fund solely for the payment of benefits and refunds as provided under §§ 46-105(i) and 46-101(2)(E)(iv) in accordance with regulations prescribed by the Director. The Director shall from time to time requisition from the Unemployment Trust Fund such amounts not exceeding the amounts standing to the District of Columbia's account therein as the Director deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt of the amount requisitioned, the Director shall deposit it in the benefit account of the District Unemployment Fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits and refunds provided in this chapter. All payments of benefits shall be made by checks drawn by the Director, or the Director's duly authorized agent, shall be made through the employment offices designated by the Director, and shall be subject to a post, but not a prior, audit by the Office of the Inspector General. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 8; June 4, 1943, 57 Stat. 114, ch. 117; 1973 Ed., § 46-308; Mar. 27, 1993, D.C. Law 9-260, §§ 206, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 206, 40 DCR 5420.)

**Cross references.** — As to authority of Board to prescribe regulations to carry out chapter, see § 46-114.

**Section references.** — This section is referred to in §§ 46-101, 46-115, and 46-117.

**Effect of amendments.** — D.C. Law 10-15 substituted "District of Columbia" for "Board's" and "Director" for "Board" in the first sentence; substituted "Director" for "Board", "District of Columbia's" for "Board's", and "the Director" for "it" in the second sentence; substituted "Direc-

tor" for "Board" in the third sentence; and substituted "Director" for "Board" and "the Director's" for "its" in the fourth sentence.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Cited** in *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 528 A.2d 883 (1987).

## § 46-110. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Director:

(1) That he has made a claim for benefits with respect to such week in accordance with such regulations as the Board may prescribe;

(2) That he has during his base period been paid wages for employment by employers equal to those required by subsection (c) of § 46-108;

(3) That he is physically able to work;

(4)(A) That he is available for work and has registered and inquired for work at the employment office designated by the Director, with such frequency

and in such manner as the Director may by regulation prescribe; provided, that failure to comply with this condition may be excused by the Director upon a showing of good cause for such failure; and the Director may by regulation waive or alter the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(B) That he has made a minimum of 2 contacts for new work in such week; provided, that failure to comply with this condition may be excused by the Director in the manner as the condition imposed by paragraph (4)(A) of this section;

(5) That he has been unemployed for a waiting period of 1 week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

(A) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(B) If benefits have been paid with respect thereto; and

(C) Unless the individual was eligible for benefits with respect thereto as provided in this section and § 46-111, except for the requirements of this paragraph and of subsection (f) of § 46-111;

(6) That he is not a prisoner in a District of Columbia correctional or penal institution who was employed in the free community under authority of subchapter IV of Chapter 4 of Title 24, or that he has not made a claim for benefits with respect to a week during which he was a prisoner in a District of Columbia correctional or penal institution;

(7)(A) Benefits based on service in employment defined in § 46-101(2)(A)(ii) and (iii) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in § 46-101(23)) shall not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years, or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has reasonable assurance of performing services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(B) Benefits based on service in employment defined in § 46-101(2)(A)(ii) and (iii) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except, that with respect to weeks of unemployment beginning after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between 2 successive academic years or terms (or, when an agreement provides instead for a similar period between 2 regular but not

successive terms, during such period) or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Subparagraph (A) of this paragraph shall apply with respect to benefits payable for weeks of unemployment beginning before January 1, 1978, based on such services.

(C)(i) Effective for weeks of compensation beginning on or after April 1, 1984, with respect to services performed in any capacity other than specified above for an educational institution or in an institution of higher education, benefits shall not be payable on the basis of such services to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is reasonable assurance that such individual will perform such services in the second of such academic years or terms.

(ii) If compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subparagraph.

(D) With respect to any services described in this paragraph, benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(E)(i) With respect to any services described in this paragraph, benefits shall not be payable on the basis of services in any such capacities to any individual who performed such services in an educational institution while in the employ of an educational service agency.

(ii) For purposes of this subparagraph the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to 1 or more educational institutions.

(8) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods); and

(9)(A) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for

permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of § 1153 or 1182 of Title 8, United States Code).

(B) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(C) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 9; July 2, 1940, 54 Stat. 733, ch. 524, § 1; June 4, 1943, 57 Stat. 114, ch. 117; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 8; Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 11; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(38); 1973 Ed., § 46-309; Mar. 3, 1979, D.C. Law 2-129, § 2(w), (x), 25 DCR 2451; June 14, 1984, D.C. Law 5-87, § 2, 31 DCR 2107; Aug. 10, 1984, D.C. Law 5-102, § 2(f), 31 DCR 2902; Mar. 27, 1993, D.C. Law 9-260, §§ 105, 207, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 105, 207, 40 DCR 5420; Apr. 18, 1996, D.C. Law 11-110, § 51, 43 DCR 530.)

**Cross references.** — As to authority of Board to prescribe rules and regulations, see § 46-114.

**Section references.** — This section is referred to in §§ 46-108 and 46-111.

**Effect of amendments.** — D.C. Law 10-15 substituted “Director” for “Board” in the introductory language and in (4)(A); substituted “Board” for “Council of the District of Columbia” in (1) and (4); and added (4)(B).

D.C. Law 11-110 validated a previously made punctuation change in (4)(B).

**Temporary amendments of section.** — Section 2 of D.C. Law 10-60 repealed (7)(C).

Section 3(b) of D.C. Law 10-60 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Unemployment Compensation Public School Employees Amendment Act of 1993, whichever occurs first.

**Emergency act amendments.** — For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act of 1993 (D.C. Act 10-101, August 9, 1993, 40 DCR 6143).

For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act of 1994 (D.C. Act 10-264, June 24, 1994, 41 DCR 4488).

For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act

of 1995 (D.C. Act 11-80, June 28, 1995, 42 DCR 3453).

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 5-87.** — Law 5-87, the “District of Columbia Unemployment Compensation Act Amendments Temporary Act of 1984,” was introduced in Council and assigned Bill No. 5-396 and was retained by Council. The Bill was adopted on first and second readings on March 27, 1984, and April 10, 1984, respectively. Signed by the Mayor on April 26, 1984, it was assigned Act No. 5-125 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 5-102.** — See note to § 46-102.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-60.** — D.C. Law 10-60, the “Unemployment Compensation Public School Employees Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-375. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-113 and transmitted to both Houses of Congress for its review. D.C. Law 10-60 became effective on November 20, 1993.

**Legislative history of Law 11-110.** — Law

11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

**Basic policy underlying Unemployment Compensation Act** is preference for compensation through employment rather than welfare compensation. *District Unemployment Comp. Bd. v. Wm. Hahn & Co.*, 399 F.2d 987 (D.C. Cir. 1968).

**Paragraph (7)(B) applies to public school substitute teachers.** — Despite the indefinite nature of their employment, paragraph (7)(B) of this section applies to substitute teachers employed by the District of Columbia public school system. *Davis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 481 A.2d 128 (1984).

**"Available for work."** — In order to be eligible for unemployment benefits, a claimant must be "available for work" which means that the claimant must be genuinely attached to the labor market and making adequate contacts for work. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Comp. Bd.*, 392 F.2d 479 (D.C. Cir. 1968); *Hawkins v. District Unemployment Comp. Bd.*, App. D.C., 390 A.2d 973 (1978); *Johnson v. District Unemployment Comp. Bd.*, App. D.C., 408 A.2d 79 (1979); *Barber v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 449 A.2d 332 (1982).

To be considered "available for work" within the meaning of this section, an individual must actively seek employment and must not unreasonably restrict his job search. *National Geographic Soc'y v. District Unemployment Comp. Bd.*, 438 F.2d 154 (D.C. Cir. 1970); *Barber v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 449 A.2d 332 (1982).

Claimant's enrollment as a day student at a state university for 9 hours of classes per week is sufficient to render him ineligible for unemployment benefits since by not devoting full time to seeking other jobs claimant failed to make himself available for reemployment. *Wood v. District Unemployment Comp. Bd.*, App. D.C., 334 A.2d 188 (1975); *Barber v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 449 A.2d 332 (1982).

The principal test for eligibility is genuine attachment to the labor market, a test which necessitates careful examination of the factual circumstances presented by a claimant. *Cumming v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1010 (1978).

**Unavailable for work.** — Petitioner was unavailable for work within the meaning of this

section since, by his own admission, he was attending class for over 12 hours per week during normal business hours and never produced evidence that suitable positions were available during the hours he indicated he was available nor indicated that he would have been able to switch or drop classes in order to accept a job with conventional hours. *Dunn v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 966 (1983).

Petitioner was unavailable for work and thereby ineligible to receive unemployment benefits for the period during which she chose to avoid contact with prospective employers in order to concentrate on her own self employment idea, which by her own testimony, would not come to fruition for several months, if at all. *Downey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 456 (1983).

**Claimant is not available for work if he unreasonably restricts his job search.** *Hawkins v. District Unemployment Comp. Bd.*, App. D.C., 390 A.2d 973 (1978); *Johnson v. District Unemployment Comp. Bd.*, App. D.C., 408 A.2d 79 (1979).

**Proof of availability for work.** — Ordinarily an applicant's ex parte certificate may permit the initial determination of eligibility for compensation benefits, but if an appeal is taken and the claim is put in issue, the claimant may receive benefits only if there is evidence to support the finding by the Board that the applicant is available for work. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Comp. Bd.*, 392 F.2d 479 (D.C. Cir. 1968).

**Inability to accept full-time work does not per se render claimant ineligible for benefits,** although a refusal to seek full-time employment may in fact negate a claimant's availability for work absent a showing of good cause under paragraph (4). *Hawkins v. District Unemployment Comp. Bd.*, App. D.C., 390 A.2d 973 (1978).

**Claimant to conduct active search for work.** — In order to support a finding that the claimant is available for work, the claimant must adduce evidence that he has conducted an active search for work. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Comp. Bd.*, 392 F.2d 479 (D.C. Cir. 1968).

**To show his attachment to labor market.** — A claimant may show that he is "genuinely attached to the labor market" by making an adequate number of contacts with employers. *Johnson v. District Unemployment Comp. Bd.*, App. D.C., 408 A.2d 79 (1979).

**Minimum weekly job contacts not required.** — Neither the unemployment compensation statute nor the Board's regulations require a claimant for unemployment benefits to make, as a condition precedent, at least 3 job

contacts weekly. *Hill v. District Unemployment Comp. Bd.*, App. D.C., 302 A.2d 226 (1973).

**Insurance agents.** — Vacation pay calculated according to that received by salaried employees and expense allowances which exceed expenses may bring insurance agents within coverage of this chapter. *Gordon v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 442 A.2d 107 (1981).

**Eligibility may not be presumed by Board.** — The Board is not bound by strict rules of evidence and the making of certain presumptions which underlie a finding of eligibility may be necessary in order to have a prompt determination of claims, but eligibility itself may not be presumed. *District Unemployment Comp. Bd. v. Wm. Hahn & Co.*, 399 F.2d 987 (D.C. Cir. 1968).

**Independent contractors ineligible.** — When the relationship of a worker to a company is that of an independent contractor rather than that of an employee as defined by the common law, that worker is not entitled to benefits under the District of Columbia Unemployment Compensation Act. *Roseexpress, Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 602 A.2d 659 (1992).

**Petitioner ineligible to receive benefits for period during which he failed to comply with prescribed reporting procedure** of mailing bi-weekly claim-pay order forms since he had notice of this bi-weekly reporting requirement and had specific information about how to report to the agency in the event he was unable to file the cards in a timely manner. *Dunn v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 966 (1983).

**Whether reasonable assurance has been afforded by employer is question of fact** to be determined by examining the relevant circumstances surrounding the employment relationship. *Davis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 481 A.2d 128 (1984).

**Paragraph (4) is applicable to persons regardless of their geographical location.** *Lechter-Siegel v. District Unemployment Comp. Bd.*, App. D.C., 395 A.2d 57 (1978).

Claimant who is otherwise eligible for benefits but unable to fulfill the reporting requirements of paragraph (4) because she had moved to Belgium is entitled to have the Board consider whether she has shown good cause to excuse her failure to report, under the proviso of paragraph (4). *Lechter-Siegel v. District Unemployment Comp. Bd.*, App. D.C., 395 A.2d 57 (1978).

**Determination of ineligibility upheld.** — Determination of ineligibility was affirmed where claimant failed to comply with the reporting requirements and was inactive on her claims for several years under circumstances where, if as she claimed, she had been misad-

vised as to procedures, she would have protested promptly. *Bledsoe v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 544 A.2d 723 (1988).

**Board's findings on adequacy of work search not supported by substantial evidence.** — Where the Board did not consider the type of employment for which an applicant was suited in its evaluation of the adequacy of her work-search efforts and where the record did not reveal the circumstances upon which the Board concluded that her work-search program was inadequate, the Board's findings were not supported by substantial evidence. *Kober v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 633 (1978).

**Scope of review.** — Where the department has determined that a claimant failed to adhere to the reporting requirements, and consequently denied unemployment compensation, the court must affirm if their finding is supported by substantial evidence in the record. *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 485 A.2d 605 (1984).

**Case remanded for consideration of good cause excuse.** — Failure of appeals examiner to expressly consider whether unavailability for work was excusable due to good cause required remand of the case to the Board with directions to conduct further proceedings in order to determine whether the unavailability was excusable under the good cause proviso of paragraph (4). *Duncan v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 645 (1978).

**Backdating claims for benefits.** — The question as to whether the Department of Employment Services has authority to backdate a claim for benefits to date of unemployment was remanded to the agency. *Wells v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 513 A.2d 235 (1986).

**Cited** in *Doherty v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 283 A.2d 206 (1971), cert. denied, 406 U.S. 932, 92 S. Ct. 1764, 32 L. Ed. 2d 135 (1972); *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973); *Hollar v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 317 A.2d 868 (1974); *Hemenway v. District Unemployment Comp. Bd.*, App. D.C., 326 A.2d 776 (1974); *Hollingsworth v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 375 A.2d 515 (1977); *Nursing Servs., Inc. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 512 A.2d 301 (1986); *Dowdy v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 515 A.2d 399 (1986); *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 528 A.2d 883 (1987); *Wright v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 509 (1989).

**§ 46-111. Disqualification for benefits.**

(a) For weeks commencing after March 15, 1983, any individual who left his most recent work voluntarily without good cause connected with the work, as determined under duly prescribed regulations, shall not be eligible for benefits until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and, notwithstanding § 46-101, has earned wages from employment as defined by this chapter equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 46-108(b).

(b)(1) For weeks commencing after January 3, 1993, any individual who has been discharged for gross misconduct occurring in his most recent work, as determined by duly prescribed regulations, shall not be eligible for benefits until he has been employed in each of 10 successive weeks (whether or not consecutive) and, notwithstanding § 46-101, has earned wages from employment as defined by this chapter equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 46-108(b).

(2) For weeks commencing after January 3, 1993, any individual who is discharged for misconduct, other than gross misconduct, occurring in the individual's most recent work, as defined by duly prescribed regulations, shall not be eligible for benefits for the first 8 weeks otherwise payable to the individual or until the individual has been employed in each of 8 subsequent weeks (whether or not consecutive) and, notwithstanding § 46-101, has earned wages from employment as defined by this chapter equal to not less than 8 times the weekly benefit amount to which the individual would have been entitled pursuant to § 46-108(b). In addition, such individual's total benefit amount shall be reduced by a sum equal to 8 times the individual's weekly benefit amount.

(3) The District of Columbia Unemployment Compensation Board shall add to its rules and regulations specific examples of behavior that constitute misconduct within the meaning of this subsection.

(c)(1) For weeks commencing after March 15, 1983, if any individual without good cause (as determined under duly prescribed regulations) fails to apply for new work in covered employment found to be suitable when notified by any employment office or fails to accept any suitable work in covered employment when offered by any employment office, by a union hiring hall, or directly by any employer, that individual shall not be eligible for benefits until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and, notwithstanding § 46-101, has earned remuneration from employment equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 46-108(b).

(2) In determining whether or not work is suitable, the following shall be considered:

(A) The physical fitness and prior training, experience, and earnings of the individual;

(B) The distance of the place of work from the individual's place of residence; and

(C) The risk involved as to health, safety, or morals.

(3) The term "in covered employment" as used in this section means employment which is insured under this chapter or any other state or federal unemployment insurance program.

(d)(1) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; or

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(2) Compensation shall not be denied to any otherwise eligible individual for any week during which he is attending a training or retraining course with the approval of the Director, and such individual shall be deemed to be otherwise eligible for any such week despite the provisions of § 46-110(4) and subsection (c) of this section; and

(3) Notwithstanding any other provision of this chapter, compensation shall not be denied or reduced to an individual solely because he files a claim in another state (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for unemployment compensation.

(e) If any individual otherwise eligible for benefits fails, without good cause as determined by the Director under regulations prescribed by the Board, to attend a training, retraining, or job counseling course when recommended by the manager of the employment office or by the Director and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Director that such individual is unemployed in such week as a direct result of a labor dispute, other than a lockout, still in active progress in the establishment where he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the Director that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(g) An individual shall not be eligible for benefits for any week with respect to which he has received or is seeking unemployment compensation under any

other unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this chapter, shall be determined under the same standards and procedures as for any other claimant under this chapter. There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue with respect to the reason for separation from employment.

(i)(1) Notwithstanding any other provision of this chapter, no otherwise eligible individual shall be denied benefits for any week because:

(A) He or she is in training approved under § 236(a)(1) of the Trade Act of 1974;

(B) He or she is in such approved training by reason of leaving work to enter such training; provided, that the work left is not suitable employment; or

(C) Because of the application to any such week in training of provisions in this law (or any federal unemployment insurance law administered hereunder) relating to availability for work, active search for work or refusal to accept work.

(2) For purposes of this subsection, the term "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages as determined for purposes of the Trade Act of 1974. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 10; June 4, 1943, 57 Stat. 114, ch. 117; Aug. 31, 1954, 68 Stat. 994, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 9; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(39); 1973 Ed., § 46-310; Nov. 1, 1975, D.C. Law 1-34, § 4, 22 DCR 2553; Mar. 3, 1979, D.C. Law 2-129, § 2(y), (z), (aa)-(cc), 25 DCR 2451; Mar. 16, 1982, D.C. Law 4-86, § 2(e), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(h), (i), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(p)-(r), 30 DCR 1371; Mar. 13, 1985, D.C. Law 5-124, §§ 2(e), (f), 4, 31 DCR 5165; Mar. 27, 1993, D.C. Law 9-260, §§ 106, 208, 40 DCR 5420; Sept. 24, 1993, D.C. Law 10-15, §§ 106, 208, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 49(b), 41 DCR 5193.)

**Cross references.** — As to authority of Board to prescribe rules and regulations, see § 46-114.

**Section references.** — This section is referred to in §§ 46-101, 46-103, 46-108, 46-110, and 46-112.

**Effect of amendments.** — D.C. Law 10-15 substituted "wages from employment as defined by this chapter" for "remuneration from employment" in (a); rewrote (b); substituted "Director" for "Board" in (d)(2), (e), and (f); and substituted "the Director" for "it" in (e).

D.C. Law 10-255 made technical amendments to the provisions of (a) and (b) in Law 10-15; and validated a previously made change in (b)(2).

**Legislative history of Law 1-34.** — Law

1-34, the "Pregnancy Discrimination Act," was introduced in Council and assigned Bill No. 1-101, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 15, 1975, and July 29, 1975, respectively. Signed by the Mayor on August 15, 1975, it was assigned Act No. 1-48 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 4-86.** — See note to § 46-103.

**Legislative history of Law 4-147.** — See note to § 46-103.

**Legislative history of Law 5-3.** — See note to § 46-102.1.

**Legislative history of Law 5-124.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-255.** — See note to § 46-101.

**Expiration of Law 5-3.** — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

Because of the amendment of the expiration provision in § 4 of D.C. Law 5-3 by § 4 of D.C. Law 5-124, the amendments made in this section by D.C. Law 5-3 are not subject to the December 31, 1985, expiration date.

**References in text.** — “Section 236(a)(1) of the Trade Act of 1974”, referred to in (i)(1)(A) is codified as 19 U.S.C. § 2296(a)(1). The “Trade Act of 1974,” referred to in paragraph (i)(2), is primarily codified as 19 U.S.C. §§ 2101 et seq., 2211 et seq., 2311 et seq., and 2411 et seq.

**Unemployment Compensation Board abolished.** — See note to § 46-101.

**Basic policy underlying this chapter** is preference for compensation through employment rather than welfare compensation. District Unemployment Comp. Bd. v. Wm. Hahn & Co., 399 F.2d 987 (D.C. Cir. 1968).

**Administrative Procedure Act applies to proceedings.** — The District of Columbia Administrative Procedure Act applies to proceedings under the Unemployment Compensation Act, and should be applied in post-hearing procedure by the Board in an unemployment compensation proceeding. Woodridge Nursery Sch. v. Jessup, App. D.C., 269 A.2d 199 (1970).

**Right to cross-examination.** — Where the unemployment compensation appeals examiner gave full consideration to the employer's unsworn comment given by telephone, he deprived the plaintiff of right to cross-examine on issues of company rules and misconduct. Hawkins v. District Unemployment Comp. Bd., App. D.C., 381 A.2d 619 (1977).

**Voluntary change in employment status.** — Employee who voluntarily changed her employment status from full-time to on-call, maximizing possibility that she would not be employed, was disqualified for unemployment benefits on grounds change in employment status constituted a voluntary quit within the meaning of this section. Freeman v. District of Columbia Dep't of Emp. Servs., App. D.C., 568 A.2d 1091 (1990).

Department of Employment Services could reasonably conclude that by voluntarily changing her status from full-time to on-call employment, employee had maximized the possibility that she would not have work, and that em-

ployee had not taken all reasonable steps to preserve her employment since she had determined, as a result of her own initiative and without any pressure or suggestion by the employer, that she wanted to pursue other endeavors and, therefore, did not want full-time employment. Freeman v. District of Columbia Dep't of Emp. Servs., App. D.C., 568 A.2d 1091 (1990).

**Penalty imposed for voluntarily leaving work.** — Where the Board found that the employee had voluntarily quit his job without good cause and thereafter had reasonably and actively looked for work, the Board was entitled to impose a penalty of 6 weeks' benefits and thereafter restore eligibility for compensation. AEM, Inc. v. Ecke, 271 F.2d 506 (D.C. Cir. 1959).

**Employer's findings on reason of termination of services not binding.** — When a person seeking unemployment compensation payable under state law has left federal government employment, and the federal employing agency has made findings on the reason for the termination of service, those findings are not conclusive unless the employee had the opportunity for a fair hearing before an impartial tribunal. Smith v. District Unemployment Comp. Bd., 435 F.2d 433 (D.C. Cir. 1970).

**Findings required for establishment of good cause in leaving employment.** — Where the court, in reviewing award of unemployment compensation with respect to claimant who left employment rather than accept transfer to employer's new location, had only the ultimate finding that claimant had established good cause for leaving her employment, the court remanded the case for a statement of basic findings from which conclusion was derived. National Geographic Soc'y v. District Unemployment Comp. Bd., 438 F.2d 154 (D.C. Cir. 1970).

**Subsection (a) does not unconstitutionally discriminate on basis of sex.** — Subsection (a) of this section, neutral on its face, is not unconstitutional as discriminating on the basis of sex where petitioner who was denied benefits offered no evidence that she was treated any differently from a male claimant who voluntarily quit his job to relocate with his wife in another state even though it may be true that wife more often than husband relocates to accommodate spouse's career choice. Schroeder v. District of Columbia Dep't of Emp. Servs., App. D.C., 479 A.2d 1281 (1984).

**Nonfinal employer cannot assert voluntary quit defense.** — A nonfinal base period employer has no right to assert the voluntary quit defense of subsection (a). Hamel & Park v. District of Columbia Dep't of Emp. Servs., App. D.C., 487 A.2d 603 (1985).

**But may develop evidence regarding termination.** — A nonfinal base period em-

ployer, in the absence of the final employer, may develop evidence on the circumstances of a claimant's alleged, voluntary termination from the final employer in a hearing concerning the possible disqualification of the claimant for benefits, pursuant to subsection (a). Hamel & Park v. District of Columbia Dep't of Emp. Servs., App. D.C., 487 A.2d 603 (1985).

**Resignation pursuant to a quit-or-be-fired offer.** — To the extent that the Board has adopted a *per se* rule that whenever an employee foregoes the right to a hearing, his resignation pursuant to a quit-or-be-fired offer will be deemed voluntary, with the relevant inquiry then becoming one of good cause, it is in error. Thomas v. District of Columbia Dep't of Labor, App. D.C., 409 A.2d 164 (1979).

**Employee's resignation after shape-up-or-ship-out threat** from employer is voluntary and without good cause; thus, disqualifying him from benefits under subsection (a). Bowen v. District of Columbia Dep't of Emp. Servs., App. D.C., 486 A.2d 694 (1985).

**Proof required to satisfy burden of proving voluntariness of separation from work** is, as in most civil cases, a fair preponderance of the evidence. Green v. District of Columbia Dep't of Emp. Servs., App. D.C., 499 A.2d 870 (1985).

**And burden of proof lies with employer.** — The burden of proving voluntariness, in cases where the issue is disputed, resides with the employer, not with the claimant. Green v. District of Columbia Dep't of Emp. Servs., App. D.C., 499 A.2d 870 (1985).

**Decision to leave motivated by desire to avoid stigma of airing psychiatric problems** would not constitute good cause within the meaning of this section. Hill v. District of Columbia Dep't of Emp. Servs., App. D.C., 467 A.2d 134 (1983).

**Initiation of involuntary psychiatric disability retirement proceedings** does not constitute a threat of imminent termination. Hill v. District of Columbia Dep't of Emp. Servs., App. D.C., 467 A.2d 134 (1983).

**"Good cause" is exception to voluntary resignation defense.** — A voluntary resignation does not automatically disqualify an employee from receiving unemployment compensation; indeed, he continues to be eligible for benefits if his departure was for good cause connected with the work. Leaving is presumed to be involuntary unless the claimant admits (or the employer establishes) that it was voluntary. Cruz v. District of Columbia Dep't of Emp. Servs., App. D.C., 633 A.2d 66 (1993).

**Employee bears burden of showing good cause for voluntarily leaving.** — Former employee did not merit compensation where he claimed he voluntarily left, at least in part, because the company's financial instability seriously threatened his job security, and because

other employees on the staff of his boss had made it difficult for him to stay. Cruz v. District of Columbia Dep't of Emp. Servs., App. D.C., 633 A.2d 66 (1993).

**Evidence sufficient to support finding that employee resigned without good cause.** — See Brooks v. District of Columbia Dep't of Emp. Servs., App. D.C., 453 A.2d 812 (1982).

**Determination of "good cause" is factual question.** — Although good cause is not defined in the statute, such a determination is factual in nature and should be judged by the standard of a reasonably prudent person under similar circumstances. Kramer v. District of Columbia Dep't of Emp. Servs., App. D.C., 447 A.2d 28 (1982).

**But "good cause" must be connected with employee's most recent work.** Gomillion v. District of Columbia Dep't of Emp. Servs., App. D.C., 447 A.2d 449 (1982).

**Relocation to accommodate spouse is not work-connected cause.** — A decision to resign employment and follow one's spouse to a new location is based upon the desire to maintain the family unit and is not the consequence of a cause connected with the work. Schroeder v. District of Columbia Dep't of Emp. Servs., App. D.C., 479 A.2d 1281 (1984).

Leaving employment to relocate with a spouse, even when the decision is prompted by financial considerations, is properly subsumed within the rubric of "domestic and personal" reasons, and does not constitute "good cause connected with the work." Lyons v. District of Columbia Dep't of Emp. Servs., App. D.C., 551 A.2d 1345 (1988).

**Moving to New York to take bar exam held not good cause.** — There is substantial support in the record for the Department's findings and conclusions that claimant voluntarily left his position as a law clerk in Washington to move to New York and take the bar examination there, where his departure from Washington was the product of his own volition and not compelled by his employer. Gopstein v. District of Columbia Dep't of Emp. Servs., App. D.C., 479 A.2d 1278 (1984).

**Health reasons for voluntarily quitting do not amount to "good cause connected with the work"** unless a claimant receives medical advice to leave work. Hockaday v. District of Columbia Dep't of Emp. Servs., App. D.C., 443 A.2d 8 (1982).

**"Medical statement" construed.** — Agency's construction of term "medical statement" as requiring a physician's statement or equivalent documentation is a reasonable one compatible with the purposes of this section. Bublis v. District of Columbia Dep't of Emp. Servs., App. D.C., 575 A.2d 301 (1990).

**Employer's obligation to inquire as to nature of employee's illness.** — While it is

true that the employer did not receive documentation, in the form of a written or oral statement by a physician, of the specific nature of petitioner's illness, its job-relatedness, or the fact that it would necessitate her quitting unless some accommodation was made, the information possessed by the employer was enough to require it to assume the duty of inquiring further of her about these matters. It must be borne in mind that 7 DCMR § 311.4 refers only to a "medical statement" and that the requirement of documentation by a physician is a gloss, a permissible one, placed upon the language by the agency. The requirement is thus a potential snare for the unwary employee, and for that reason basic fairness dictates that at some point the party assumed to have greater knowledge of the regulatory scheme must bear the responsibility of confirming the nature and cause of the illness and the prospect it holds out for resumption of work. *Bublis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 575 A.2d 301 (1990).

**Employee bears burden of showing "good cause" for voluntarily leaving.** — Employee failed to carry his burden of presenting evidence sufficient to support a finding that he had good cause connected with his work for voluntarily leaving. *Harris v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 476 A.2d 1111, cert. denied, 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132 (1984).

**Leaving is presumed to be involuntary,** but this presumption is rebuttable. *Hockaday v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 443 A.2d 8 (1982); *Green v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 499 A.2d 870 (1985).

There is a rebuttable presumption that an employee's leaving is involuntary. The presumption stands unless the claimant acknowledges that it was voluntary or the employer presents evidence to support a finding that it was voluntary. *Wright v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 509 (1989).

**Hearsay testimony held insufficient to resolve factual question of voluntariness of employee's leaving job.** — See *McLean v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 506 A.2d 1135 (1986).

**Question of voluntariness in leaving employment must be determined** by reference to whether the employee's action was compelled by the employer rather than based on the employee's volition. *Hockaday v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 443 A.2d 8 (1982).

**Resignation is voluntary under this section** when faced with the choice of quitting or sustaining physical and mental injuries. *Hockaday v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 443 A.2d 8 (1982).

#### **Withdrawal of voluntary resignation.** —

Once an employee voluntarily resigns from the job, the employer's decision not to accept a subsequent withdrawal of that resignation does not transform the employee's act into an involuntary one. *Wright v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 560 A.2d 509 (1989).

**Respondent may not direct length of ineligibility of petitioner who left job voluntarily.** — Petitioner who left job voluntarily without good job-related cause properly was disqualified and ruled ineligible for benefits. The statute as written left no room for discretion; respondent was not free to direct that petitioner's disqualification end after a certain number of weeks, nor would the disqualification come to an end automatically. *Brice v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 472 A.2d 406 (1984).

**Disqualification may be purged by 4 consecutive weeks of employment.** — Claimant who was partially disqualified from unemployment benefits for leaving work without good cause under District of Columbia law is disqualified and statutorily ineligible to receive Federal Supplemental Compensation benefits unless FSC disqualification is purged by at least 4 consecutive weeks of employment subsequent to filing of initial District of Columbia claim. *Whittle v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 478 A.2d 1072 (1984).

**"Involuntary" defined.** — While employee's departure from employment is presumed to be involuntary, it is clear that involuntariness means that decision to leave must be compelled by the employer as contrasted to a volitional act by the employee. *Giesler v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 471 A.2d 246 (1983).

**Erroneous denial must be overturned by reviewing court.** — A reviewing court must overturn a denial of benefits erroneously based on conduct substantially different from that which is specified as the reason for the initial discharge. *American Univ. v. District of Columbia Dep't of Labor*, App. D.C., 429 A.2d 1374 (1981).

**"Misconduct"** within this section must be an act of wanton or wilful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. *Hickenbottom v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 273 A.2d 475 (1971); *Green v. District Unemployment Comp. Bd.*, App. D.C.,

346 A.2d 252 (1975); Williams v. District Unemployment Comp. Bd., App. D.C., 383 A.2d 345 (1978); Jones v. District of Columbia Unemployment Comp. Bd., App. D.C., 395 A.2d 392 (1978); Keep v. District of Columbia Dep't of Emp. Servs., App. D.C., 461 A.2d 461 (1983); Colton v. District of Columbia Dep't of Emp. Servs., App. D.C., 484 A.2d 550 (1984).

Implied in all these standards for misconduct, however, is a requirement that the employee be on notice that should he proceed he will damage some legitimate interest of the employer for which he could be discharged. Williams v. District Unemployment Comp. Bd., App. D.C., 383 A.2d 345 (1978); Jones v. District of Columbia Unemployment Comp. Bd., App. D.C., 395 A.2d 392 (1978).

While unsatisfactory work performance may amount to "misconduct" in some instances, implicit in the court's definition of "misconduct" is that the employee intentionally disregarded the employer's expectations for performance. Keep v. District of Columbia Dep't of Emp. Servs., App. D.C., 461 A.2d 461 (1983).

**Ordinary negligence in disregarding employer's standards or rules insufficient to constitute "misconduct."** — Ordinary negligence in disregarding the employer's standards or rules will not suffice as a basis of disqualification for misconduct. Keep v. District of Columbia Dep't of Emp. Servs., App. D.C., 461 A.2d 461 (1983); Colton v. District of Columbia Dep't of Emp. Servs., App. D.C., 484 A.2d 550 (1984).

**Excusable misconduct.** — Under some circumstances, misconduct is excusable if it is justified; such as when legally adequate provocation triggers a claimant's misconduct retaliatory action. Grant v. District of Columbia Dep't of Emp. Servs., App. D.C., 490 A.2d 1115 (1985).

**Ordinary negligence or honest mistake in judgment not sufficient basis for misconduct disqualification.** Jadallah v. District of Columbia Dep't of Emp. Servs., App. D.C., 476 A.2d 671 (1984).

**Misconduct unrelated to wage dispute.** — Petitioner's involvement in a wage dispute with his employer could not shield him from the consequences of his misconduct totally unrelated to that dispute. Grant v. District of Columbia Dep't of Emp. Servs., App. D.C., 490 A.2d 1115 (1985).

**Strike after expiration of collective bargaining agreement is "labor dispute."** — A strike after the expiration of a collective bargaining agreement as well as one during the term of the agreement is a "labor dispute" within the meaning of subsection (f) of this section. Barbour v. District of Columbia Dep't of Emp. Servs., App. D.C., 499 A.2d 122 (1985).

**Filing of false disability claim is misconduct** within the meaning of subsection (b).

Pitts v. District of Columbia Dep't of Emp. Servs., App. D.C., 497 A.2d 1060 (1985).

**Threatening to cut supervisor's throat is misconduct justifying disqualification.** Jones v. District of Columbia Dep't of Emp. Servs., App. D.C., 451 A.2d 295 (1982).

**Reemployment of employee whom same employer had discharged for misconduct** does not automatically constitute approval or condonation by the employer of the employee's misconduct. Pitts v. District of Columbia Dep't of Emp. Servs., App. D.C., 497 A.2d 1060 (1985).

**Where misconduct consists of violation of rules of employer,** the rules must be reasonable, their existence must have been made known to the employees, and they must be consistently enforced. Curtis v. District of Columbia Dep't of Emp. Servs., App. D.C., 490 A.2d 178 (1985); Jones v. District of Columbia Dep't of Emp. Servs., App. D.C., 558 A.2d 341 (1989).

If wilful violation of employer's rules is the basis for the disqualification from benefits because of misconduct, the Director shall determine the following: (a) That the existence of the employer's rule was known to the employee; (b) that the employer's rule was reasonable; and (c) that the employer's rule was consistently enforced by the employer. Roseexpress, Inc. v. District of Columbia Dep't of Emp. Servs., App. D.C., 602 A.2d 659 (1992).

**Burden of proof of misconduct on employer.** — The burden of proof of misconduct on the part of the petitioner with respect to his having allegedly reported for work under the influence of alcohol is on the employer if the petitioner is to be disqualified from receiving unemployment benefits because of alleged misconduct. Simmons v. District Unemployment Comp. Bd., App. D.C., 292 A.2d 797 (1972).

Employer has burden of proving misconduct within the meaning of subsection (b). Jones v. District of Columbia Unemployment Comp. Bd., App. D.C., 395 A.2d 392 (1978); Colton v. District of Columbia Dep't of Emp. Servs., App. D.C., 484 A.2d 550 (1984); Curtis v. District of Columbia Dep't of Emp. Servs., App. D.C., 490 A.2d 178 (1985).

**Sworn testimony is required in contested cases involving alleged misconduct.** Curtis v. District of Columbia Dep't of Emp. Servs., App. D.C., 490 A.2d 178 (1985).

**Use of disciplinary reports to prove misconduct.** — The following factors conferred reliability on disciplinary action reports which, viewed together with the supervisor's testimony, provided substantial support for the examiner's finding that employee was terminated for conduct manifesting a disregard of standards of behavior an employer has a right to expect of his employees under subsection (b)(2): The reports were prepared by a succession of sergeants contemporaneously with the events,

and reports were completed as part of employer's regular procedure for disciplining employees, and they were routinely followed up by personal counseling — in some cases by the supervisor himself, who had personal knowledge of three incidents. *James v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 632 A.2d 395 (1993).

**Basis for discharge must be reasonable.**

— In order to disqualify a claimant from benefits for misconduct, the basis for discharge must be reasonable, considered not with reference to the business interest of the employer but with reference to the purpose of statutory insurance, which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of relief or other welfare programs. *Williams v. District Unemployment Comp. Bd.*, App. D.C., 383 A.2d 345 (1978).

Whether an employer's rules governing the conduct of its employees are reasonable, so as to be basis for disqualification from receiving unemployment benefits, is measured not in reference to business interest of employer but with reference to statutory insurance purpose. *Hickenbottom v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 273 A.2d 475 (1971).

**Employer's concept of misconduct may not comport with statute.** — Employee discharged for misconduct based on employer's concept of that term is not necessarily guilty of misconduct within the meaning of this section. *Williams v. District Unemployment Comp. Bd.*, App. D.C., 383 A.2d 345 (1978); *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**Board and employer must concur on reasons for discharge.** — Finding of misconduct by Board under subsection (b) must be based fundamentally on the reasons specified by the employer for the discharge. *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**But unnecessary to demonstrate discharge procedurally proper.** — Under subsection (b), an employer need not demonstrate that the discharge for misconduct was procedurally proper. *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**Action held to be misconduct.** — An employee who was discharged from his employment as a waiter principally because of poor service to guests, although he had been warned concerning the matter previously by the management and had the experience to render good service, which he deliberately failed to do, is disqualified from receiving unemployment compensation benefits for a penalty period because he had been discharged for misconduct. *Kartsonis v. District Unemployment Comp.*

*Bd.*, App. D.C., 289 A.2d 370, cert. denied, 409 U.S. 872, 92 S. Ct. 203, 34 L. Ed. 2d 124 (1972).

Where an outside salesman, despite warnings from his supervisor, on several occasions cut short his workday to attend to personal affairs without first receiving permission, the employee breached his contractual duty to devote his entire time, attention and energies to his employment and was guilty of misconduct as a matter of law. *Colvin v. District Unemployment Comp. Bd.*, App. D.C., 306 A.2d 662 (1973).

Separation from employment as wage rate director for international union due to affirmance of conviction for violating Landrum-Griffin Act, which conviction precluded employment with the union for 5 years, was tantamount to a discharge for misconduct so as to render wage rate director, disqualified for unemployment compensation. *Budzanoski v. District Unemployment Comp. Bd.*, App. D.C., 326 A.2d 243 (1974).

A police officer's willingness to accept assignments to harbor police job or plainclothes squad, assignments which he claimed were not covered by hair-grooming regulations, would not justify his refusal to conform to a rule prescribing standards of hair length for purposes of determining whether his refusal to follow rules was "misconduct." *Marshall v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 429 (1977).

A meter reader's action in throwing his flashlight at a customer's glass storm door at eye level while the customer was standing behind it was not justified by the customer's slur and constituted misconduct. *Williams v. District Unemployment Comp. Bd.*, App. D.C., 383 A.2d 345 (1978).

Where an employee in a group home for delinquent youths was found sleeping on the job and his employer rightfully could expect its night youth care specialists to remain alert and vigilant throughout their work shift, the employee's failure to do so constituted disqualifying misconduct. *Grant v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 490 A.2d 1115 (1985).

Employee's failure to report to work for 5 days constituted misconduct. *Butler v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 598 A.2d 733 (1991).

Misconduct justifying termination was present where employee: (1) left his work station without authorization; (2) failed to follow his supervisor's instructions regarding socializing when he should have been working; (3) violated work rules by drinking alcoholic beverages on the job; and (4) was excessively tardy. The Office of Appeals and Review acting chief erred when he reversed the appeals examiner's misconduct finding, incorrectly concluding that substantial evidence was lacking to support

any of the findings of misconduct. *Shaw, Pittman, Potts, & Trowbridge v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 641 A.2d 172 (1994).

Conviction for accepting a bribe to deliver cocaine to prison inmates is "misconduct" under subsection (b) because, by doing so, guard, at a minimum, disregarded the standards of behavior which his employer had a right to expect of him. *Mack v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 651 A.2d 804 (1994).

**Participation in writing of memoranda proscribed by employer was misconduct** for which an employee was properly dismissed. *Dyer v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 392 A.2d 1 (1978).

**Falsifying tax returns is misconduct.** — Employees who use confidential information, available to them by virtue of their employment, to defraud the government on their own tax returns are dishonest. The appeals examiner, after hearing the testimony presented by both the employee and employer, including the employee's admission that she in fact falsified her tax returns, ruled that the employee's conduct was dishonest, and therefore constituted misconduct within the meaning of the regulations and this section; there was substantial evidence to support that decision. *District of Columbia v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 640 A.2d 1039 (1994).

**Action held not to be misconduct.** — Petitioner's participation in an allegedly unauthorized demonstration is not statutory misconduct so as to disqualify him from receiving unemployment benefits, since the petitioner was in a suspended work status before his alleged misconduct took place, and since there was no finding linking petitioner's participation in demonstration with his work. *Hickenbottom v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 273 A.2d 475 (1971).

A petitioner who notified his supervisors that he would not be at work because he had personal business to transact cannot be disqualified from receiving unemployment compensation benefits on the ground that his absence without excuse constituted statutory misconduct, since there was no company rule or regulation making it mandatory that the request be accompanied with detailed and specific reason, and the company had not consistently required a bill of particulars before deciding to excuse an absence. *Green v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 273 A.2d 479 (1971).

An alleged company rule prohibiting performance of paid overtime work at home without a supervisor's approval, which was allegedly violated and thus formed the basis of a finding of petitioner's misconduct in unemployment compensation proceeding, falls short of the stan-

dard of statutory misconduct. *Green v. District Unemployment Comp. Bd.*, App. D.C., 346 A.2d 252 (1975).

In the absence of showing that the employer had established a specifically required procedure that was to be followed to notify the employer when an employee was unable to report to work, the fact that the absent employee did not personally telephone job site to report job absences and rather provided notice through a co-employee does not show "misconduct" sufficient to preclude the former employee's entitlement to unemployment compensation benefits. *Hawkins v. District Unemployment Comp. Bd.*, App. D.C., 381 A.2d 619 (1977).

Company president's presence on the scene, condoning with his silence both the purchase and delivery of beer and the admission of an unauthorized person into a restricted area in violation of company rules, rendered petitioner's conduct at best permissible and at worst merely negligent. *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 558 A.2d 341 (1989).

Where check-cashing policy was inconsistently enforced with respect to seasoned employees, petitioner did not commit statutory misconduct in disregarding it. *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 558 A.2d 341 (1989).

A finding that an employee has violated company policy, by itself, is not enough to sustain a conclusion that the employee was fired for misconduct. Among other things, the agency must make findings, supported by substantial record evidence, as to whether the employee was aware of the policy, whether it was consistently enforced, and whether the employee's violation was deliberate, and claims examiner's determination that petitioner was fired for misconduct was not supported by substantial evidence. *McCaskill v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 572 A.2d 443 (1990).

**Involuntary separation.** — Where employee in effect was told to quit or stay and be miserable, with an implied threat of being fired if she in some further undefined way stepped out of line, employer's conduct caused an "involuntary separation." *Washington Chapter of Am. Inst. of Architects v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 594 A.2d 83 (1991).

Testimony tended to establish that (employee's) resignation was coerced by representations concerning pending or threatened personnel actions, which if completed, would have had an adverse effect when she sought other employment; the Board's appeals examiner was not privileged to disregard this evidence, which demonstrated so clearly that petitioner's resignation was involuntary. *Washington Chapter of Am. Inst. of Architects v. District of Columbia*

Dep't of Emp. Servs., App. D.C., 594 A.2d 83 (1991).

**Employer's report is absolutely privileged.** — A report which the plaintiff's employer filed with the Board and which stated that the plaintiff was "discharged for dishonesty, shortages in cash and stock," was absolutely privileged. Goggins v. Hoddes, App. D.C., 265 A.2d 302 (1970).

**Case remanded because of decision's ultimate effect on employer's contributions to fund.** — Appellate court remanded case for redetermination of disqualification under subsection (b), despite the Board's prior failure to develop sufficient evidence of misconduct, because the employer's contribution to the Unemployment Compensation Fund would be affected by the claims experience of its employees. Jones v. District of Columbia Unemployment Comp. Bd., App. D.C., 395 A.2d 392 (1978).

**Claimant's right to appeal not waived.** — Claimant's failure to appear at the hearing may have waived his right to present testimony, but, given the fact that the burden was still on the employer to prove misconduct, it did not waive his appeal, and agency's dismissal was not legitimized by the fact that the "Notice of Hearing" stated that failure to appear at the hearing "may result in denial of benefits of the appeal." Claimant's failure to appear at a hearing where the opposing side bears the burden of proof is no different from appearing and declining to testify. The employer still must introduce evidence proving misconduct, and the examiner must make particular factual findings and legal conclusions based on that evidence. McCaskill v. District of Columbia Dep't of Emp. Servs., App. D.C., 572 A.2d 443 (1990).

**Evidence insufficient to support finding that claimant's misconduct was not wilful.** Roseexpress, Inc. v. District of Columbia Dep't of Emp. Servs., App. D.C., 602 A.2d 659 (1992).

**Record insufficient for review.** — Where examiner did not make a clear finding as to employee claimant's mental state, nor articulate her view of the legal standard governing an employee's mental state, the record was insufficient for review of finding of employee misconduct. Long v. District of Columbia Dep't of Emp. Servs., App. D.C., 570 A.2d 301 (1990).

In a challenge of an award of unemployment compensation the examiner's analysis did not provide the requisite foundation on which to review the agency's conclusion that claimant engaged in no misconduct warranting denial of unemployment benefits. 2101 Wis. Assocs. v. District of Columbia Dep't of Emp. Servs., App. D.C., 586 A.2d 1221 (1991).

**Review of appeals examiner's decision.** — When the chief of the Office of Appeals and Review reviews an appeals examiner's decision, due deference must be accorded the credibility

determinations of the examiner who heard and evaluated the evidence. District of Columbia v. District of Columbia Dep't of Emp. Servs., App. D.C., 640 A.2d 1039 (1994).

Office of Appeals and Review may not reject an appeals examiner's findings of disputed fact based on a resolution of witness credibility unless the examiner's findings are unsupported by substantial evidence. The requirement of substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. District of Columbia v. District of Columbia Dep't of Emp. Servs., App. D.C., 640 A.2d 1039 (1994).

**Findings of Department.** — Where record of a decision of the Department of Employment Services Office of Appeals and Review that disqualified employee, on the basis of job-related misconduct, was prevented from receiving unemployment benefits, did not contain the findings necessary to support a discharge for misconduct, the decision would be vacated. Mack v. District of Columbia Dep't of Emp. Servs., App. D.C., 651 A.2d 804 (1994).

**Computation of 10 days for appeal as calendar or business days.** — A notice which fails to state whether the 10 days designated for filing an appeal are computed as calendar or business days is ambiguous and inadequate as a matter of law. Kittrell v. District of Columbia Dep't of Emp. Servs., App. D.C., 498 A.2d 1178 (1985); Cobo v. District of Columbia Dep't of Emp. Servs., App. D.C., 501 A.2d 1278 (1985).

**Nature of "suitable work" changes with length of unemployment.** — Where the plaintiff is offered a 2-month job, although a claimant might not initially be expected to take a temporary job, the Board is reasonable in expecting him to do so after 4 months of unemployment, and such job may be determined to be "suitable" work under subsection (c) of this section. Johnson v. District Unemployment Comp. Bd., App. D.C., 408 A.2d 79 (1979).

The prior earnings criterion provided in subsection (c) of this section may be tempered with a length-of-employment factor. Johnson v. District Unemployment Comp. Bd., App. D.C., 408 A.2d 79 (1979).

As the period of unemployment continues, a job offer at a salary lower than the claimant earned previously may become suitable, even though the lower salary may not have been suitable at the time the claimant first became unemployed. Johnson v. District Unemployment Comp. Bd., App. D.C., 408 A.2d 79 (1979).

**Employee involved in labor dispute.** — Where unemployment compensation claimants' refusal to work without overtime stemmed directly from labor dispute which involved legality of newspaper's attempt under contractual agreement to force its pressmen to work without overtime, employer and employees were

involved in labor dispute and claimants were thus disqualified under subsection (f) from receiving unemployment compensation. *Washington Post Co. v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 436 (1977).

Where the failure to cross a picket line stems from a reasonable fear of violence or threats to a person's safety, the claimant would be eligible for unemployment compensation. *Washington Post Co. v. District Unemployment Comp. Bd.*, App. D.C., 379 A.2d 694 (1977).

Where the initial cause of unemployment was employees' refusal to work after the expiration of a collective bargaining agreement, even though the employees offered to return to work until a new contract was signed and the employer refused, the continued unemployment was not involuntary and was not outside the scope of this section disqualifying claimants for unemployment compensation benefits if they are unemployed as a result of a labor dispute. *NBC v. District Unemployment Comp. Bd.*, App. D.C., 380 A.2d 998 (1977).

**Cited** in *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 294 A.2d 177 (1972); *Benjamin Rose Inst. v. District Unemployment Comp. Bd.*, App. D.C., 355 A.2d 569, cert. denied, 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101 (1976); *Cumming v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1010 (1978); *Worrell v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1036 (1978); *Duncan v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 645 (1978); *Carpenter v.*

*District Unemployment Comp. Bd.*, App. D.C., 409 A.2d 175 (1979); *Adams v. District Unemployment Comp. Bd.*, App. D.C., 414 A.2d 830 (1980); *Downey v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 467 A.2d 456 (1983); *Botts v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 473 A.2d 382 (1984); *Perkins v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 482 A.2d 401 (1984); *DaCosta v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 493 A.2d 312 (1985); *Selk v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 1056 (1985); *Dozier v. Department of Emp. Servs.*, App. D.C., 498 A.2d 577 (1985); *Henry J. Kaufman & Assocs. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 503 A.2d 684 (1986); *Sterling v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 513 A.2d 253 (1986); *Shepherd v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 514 A.2d 1184 (1986); *Smithsonian Inst. v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 514 A.2d 1191 (1986); *Anthony v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 528 A.2d 883 (1987); *Washington Times v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 530 A.2d 1186 (1987); *Lewis v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 545 A.2d 1260 (1988); *Rauh v. Coyne*, 744 F. Supp. 1181 (D.D.C. 1990); *Freeman v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 575 A.2d 1200 (1990); *Green v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 608 A.2d 1216 (1992).

## § 46-112. Determination of claims; hearing; appeal; witness fees.

(a) Claims for benefits shall be made in accordance with such regulations as the Director may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Director may by regulations prescribe. Each employer shall supply such individuals with copies of such printed statements or materials relating to claims for benefits as the Director may by regulation prescribe. Such printed statements or materials shall be supplied by the Director to each employer without cost to him.

(b) Promptly after an individual has filed a claim for benefits, an agent of the Director designated by it for such purpose shall make an initial determination with respect thereto which shall include a determination with respect to whether or not such benefit may be payable, and if payable, the week with respect to which payments will commence, the maximum duration thereof, and the weekly benefit amount, except that in any case in which the payment or denial of benefits will be determined by the provisions of § 46-111(e), the agent shall promptly transmit such claim to an appeal tribunal which shall make a decision thereon after such investigation as it deems necessary, and after affording the parties opportunity for fair hearing in accordance with subsec-

tion (e) of this section, and the claimant and interested parties shall be given notice thereof and permitted to appeal therefrom to the Director and the courts as is provided in this chapter for notice of, and appeals from, decisions of appeal tribunals. An initial determination may, for good cause, be reconsidered. The claimant and other parties to the proceedings shall be promptly notified of the initial determination or any amended determination and the reasons therefor. Benefits shall be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial determination except as hereinafter otherwise provided. The Director shall promptly notify the claimant and any party to the proceeding of its determination, and such determination shall be final within 10 days after the mailing of notice thereof to the party's last-known address or in the absence of such mailing, within 10 days of actual delivery of such notice. If an appeal tribunal affirms an initial determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. If, subsequent to such initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations.

(c) To hear and decide appealed claims, the Director shall appoint 1 or more appeal tribunals to hold hearings in accordance with regulations prescribed by the Director at which all parties shall be given opportunity to present evidence and to be heard. In the conduct of such hearings, the parties shall not be bound by common law or statutory rules of evidence or other technical rules of procedure, but the appeal tribunal shall use due diligence to ascertain the true facts of the case.

(d) Each appeal tribunal shall consist of either an examiner regularly employed by the Director on a salaried basis or a body composed of an examiner who shall act as chairman, and, without regard to the civil service laws otherwise applicable, of 1 representative of employees and 1 representative of employers, each designated by the Director. No representative shall be regularly employed by the Director, nor shall any person acting in any case on behalf of the Director have any interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of an appeal tribunal is present; and if either or both of such representatives fail to appear for any such hearings or are disqualified from participating in any such hearings, the examiner shall proceed to hear the case; provided, that the Director may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. Each such representative shall be paid for each day on which he actively engaged or was present and prepared to engage in the conduct of any such hearings, such sums, not in excess of \$10, as the Director shall by regulation prescribe.

(e) An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm or modify the finding of facts and the initial determination. The parties shall be duly notified of the decision of such appeal tribunal, together with the reasons therefor. The

Director, under regulations prescribed by the Director, may permit further appeal by any party or may, upon the Director's own motion, affirm, reverse, or modify the decision of the appeal tribunal or may set it aside and order a rehearing or the taking of additional evidence before the same or a different appeal tribunal. Unless a petition for such appeal is filed within 10 days of mailing of the decision of an appeal tribunal, or within such 10-day period the Director has taken action on the Director's own motion in accordance with the provisions of this subsection, the decision of the appeal tribunal shall constitute the decision of the Director and shall be effective as such. Any decision of an appeal tribunal which is not so modified or so appealed within such 10-day period is final for all purposes, except as provided in § 46-113, and is not subject to review by the Office of the Inspector General. All decisions rendered by the Director affirming, reversing, or modifying any decision of an appeal tribunal shall become effective immediately, unless the Director shall otherwise order, and are not subject to review by the Office of the Inspector General.

(f) A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at every hearing on any such claim shall be taken down by a stenographer or recording device, but shall not be transcribed except upon order of the Director or in the event of an appeal pursuant to § 46-113. Upon any such appeal, a copy of all the testimony and of the findings of fact upon which the Director's decision was based shall be filed with the court, and the facts so found shall, if supported by evidence, be binding on the court.

(g) Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Director. Such fees shall be deemed part of the expense of administering this chapter.

(h) The Director shall establish and administer a Claimant-Employer Advocacy Fund, funded with monies collected as interest and penalty payments from employers due to their late filing of wage reports, late payment of employer contributions, and late payment of payments in lieu of contributions. The Fund shall be used exclusively to support the provision of assistance to and legal representation for claimants and employers involved in administrative appeals of claim determinations made by the Director. The Fund shall support the provision of such assistance and representation for claimants at the Metropolitan Washington Council, AFL-CIO and shall support the provision of such assistance and representation for employers at the D.C. Chamber of Commerce and at the Greater Washington Board of Trade. The total amount of funds which the Director provides from this Fund to the Metropolitan Washington Council, AFL-CIO, shall be twice the combined amount provided to the D.C. Chamber of Commerce and the Greater Washington Board of Trade.

(i) Testimony in hearings arising under this chapter may be given and received by telephone.

(j) Any finding of fact or law, determination, judgment, conclusion, or final order made by a claims examiner, hearing officer, appeals examiner, the Director, or any other person having the power to make findings of fact or law in connection with any action or proceeding under this chapter, shall not be

conclusive or binding in any separate or subsequent action or proceeding between an individual and his present or prior employer brought before an arbitrator, court, or judge of the District of Columbia or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11; June 4, 1943, 57 Stat. 116, ch. 117; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(40); 1973 Ed., § 46-311; Mar. 13, 1985, D.C. Law 5-124, § 2(g), 31 DCR 5165; Mar. 27, 1993, D.C. Law 9-260, §§ 107, 209, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 107, 209, 40 DCR 5420.)

**Section references.** — This section is referred to in §§ 46-101, 46-103, 46-120, and 47-1812.11.

**Legislative history of Law 5-124.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Application of Administrative Procedure Act.** — The District of Columbia Administrative Procedure Act (§ 1-1501 et seq.) applies to proceedings under this title, and should be applied in post-hearing procedure by the Board in an unemployment compensation proceeding. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970); *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972).

Hearings under this section must conform with Administrative Procedure Act requirements. *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

Review of unemployment compensation cases by the District of Columbia Court of Appeals is governed by the District of Columbia Administrative Procedure Act (§ 1-1501 et seq.). *Thomas v. District of Columbia Dep't of Labor*, App. D.C., 409 A.2d 164 (1979).

**Persons qualified to receive welfare benefits entitled to due process.** — Welfare benefits are a matter of statutory entitlement, and persons qualified to receive such benefits are entitled to due process. *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**"Last-known address."** — The phrase "last-known address" as used in subsection (b) of this section, is not invariably the most recent mailing address of the claimant. *MacKenzie v. District of Columbia Unemployment Comp. Bd.*, 393 F.2d 659 (D.C. Cir. 1968).

Where the Board found the claimant eligible for unemployment benefits, and thereafter the claims deputy ruled that the claimant was not available for work and mailed notice of such determination to the temporary address of the claimant in Minnesota, instead of to the permanent

address of the claimant in Washington, D.C., and it was known that the temporary address had been abandoned, the notice was not sufficient to start the period for taking an appeal by the claimant because it was not the "last-known address" within the meaning of this section. *MacKenzie v. District of Columbia Unemployment Comp. Bd.*, 393 F.2d 659 (D.C. Cir. 1968).

In deciding what is the "last-known address" for purposes of sending notice to an individual claimant, Department of Employment Services (DOES) can logically conclude that the address listed on the initial claim form is the claimant's address for all purposes, unless the claimant informs DOES of a more specific or different address. *Allen v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 578 A.2d 687 (1990).

It is the claimant's responsibility to supply the agency with the most complete address necessary for proper delivery. Correspondingly, once a claimant has provided the agency with an address, the agency is required to send notice of any determinations to that address. *Allen v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 578 A.2d 687 (1990).

**Eligibility may not be presumed.** — The Board is not bound by strict rules of evidence, and the making of certain presumptions which underlie a finding of eligibility may be necessary in order to have prompt determination of claims, but eligibility itself may not be presumed. *District Unemployment Comp. Bd. v. Wm. Hahn & Co.*, 399 F.2d 987 (D.C. Cir. 1968).

**Parties notified of initial determination of eligibility.** — Under the provision of subsection (b) of this section that the claimant and other parties to the proceedings shall be promptly notified of the initial determination with respect to whether or not the benefits may be payable, notice to all "base period employers" is required. *District Unemployment Comp. Bd. v. Wm. Hahn & Co.*, 399 F.2d 987 (D.C. Cir. 1968); *Malcolm Price, Inc. v. District Unemployment Comp. Bd.*, App. D.C., 350 A.2d 730 (1976).

**Opportunity to challenge eligibility.** — There must be some opportunity to challenge the claimant's eligibility before payments are

made. *District Unemployment Comp. Bd. v. Wm. Hahn & Co.*, 399 F.2d 987 (D.C. Cir. 1968).

**Notice of filing appeal.** — Even if the Board deems it unnecessary to permit a reply to a petition for appeal in an unemployment compensation proceeding, the other party should have at least been given notice that the appeal had been filed. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970).

**Notice in compliance with due process requirements.** — Ten-day time limit for filing an appeal is not unreasonable and did not deny claimant due process of law where the department fully complied with all relevant statutory provisions, particularly subsection (b), and in so doing gave her reasonable notice of the decision of the claims deputy, her right to appeal from that decision, and the time within which she must do so, and where claimant had 6 days after receiving the notice within which to file appeal. *Gosch v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 484 A.2d 956 (1984).

There was no violation of due process where statutory notice requirements of subsection (b) were followed, where notice was mailed to the address of record and was never returned by the postal service as undeliverable, and where claimant received subsequent mail which was sent by the Board to the same address. *Carroll v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 487 A.2d 622 (1985).

**Purpose of 10-day period for employer's appeal.** — The purpose of this limitation on the time in which an employer can appeal the determination of eligibility for unemployment benefits is not to discourage appeals but to prevent unreasonable delay in the payment of benefits. *Atchison & Keller, Inc. v. District Unemployment Comp. Bd.*, 435 F.2d 411 (D.C. Cir. 1970).

**Ten-day period is jurisdictional.** — The 10-day period provided in subsection (e) of this section is jurisdictional, and a failure to file a notice of appeal within the required time will divest the agency of jurisdiction to consider the appeal. *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 490 A.2d 1162 (1985).

The 10-day time limit for filing an appeal is jurisdictional and cannot be extended. *DaCosta v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 493 A.2d 312 (1985).

The 10-day limit in subsection (b) is jurisdictional; the agency has no power to extend the limit based on the circumstances of an individual case. *Allen v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 578 A.2d 687 (1990).

Failure to file appeal of Department of Employment Services (DOES) unemployment compensation decisions within required 10-day period divests DOES of jurisdiction to hear the appeal, unless claimant did not receive proper notice of decision and right to an administra-

tive appeal. *Lundahl v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 596 A.2d 1001 (1991).

**Ten-day period refers to 10 calendar days.** — The 10-day period after which a claims deputy's determination shall be final refers to 10 calendar days, not 10 business days. *Selk v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 1056 (1985).

A departmental regulation that a party must file a first-level appeal within 10 days, which reiterated the statutory mandate in subsection (b) of this section pertaining to the finality of a claims examiner's determinations, refers to calendar days and not working days. *Plouffe v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 497 A.2d 464 (1985).

**Notice is prerequisite to invoking jurisdictional bar.** — A prerequisite to invoking the jurisdictional bar of subsection (e) of this section is the agency's obligation of giving notice which was reasonably calculated to apprise petitioner of the decision of the claims deputy and an opportunity to contest that decision through an administrative appeal. *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 490 A.2d 1162 (1985); *Cobo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 501 A.2d 1278 (1985).

**Adequacy of notice form.** — Form of notice of time to appeal ineligibility for unemployment benefits was defective for failure to specify whether 10-day appeal period consisted of calendar days or working days. *Cobo v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 501 A.2d 1278 (1985).

**Notice insufficient to trigger 10-day period.** — A "Notice to Last Employer" sent to the employer who was both the base period employer and the last employer did not trigger the 10-day period for an employer's appeal from the determination of eligibility for unemployment benefits, where the notice did not affirmatively state that the initial determination of eligibility had been made. *Atchison & Keller, Inc. v. District Unemployment Comp. Bd.*, 435 F.2d 411 (D.C. Cir. 1970).

"Notice to Principal Base Period Employer of Benefit Payment" did not trigger the 10-day period for an employer's appeal from the determination of eligibility for unemployment benefits, particularly since it stated that the employer could not appeal the payment shown on the notice. *Atchison & Keller, Inc. v. District Unemployment Comp. Bd.*, 435 F.2d 411 (D.C. Cir. 1970).

**Application of cases construing proof of required mailing of notice.** — The case of *Thomas v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 490 A.2d 1162 (1985), where the court held that the "Dated and Mailed" notation on the agency's hearing notice form, followed by a date, does not constitute proof, in

the absence of any certification or description of agency mailing procedures, that any notice was actually mailed and concluded that when the record is devoid of any proof of mailing, the agency has not satisfied its obligation to afford the claimant a "reasonable opportunity for fair hearing" is distinguished from the earlier case of *Carroll v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 487 A.2d 622 (1985), in which the court held that the petitioner was not denied due process simply because he did not receive notice of the hearing when it was clear that the agency had mailed the notice to him and it was not returned to the agency. The issue of whether there was sufficient proof of mailing was not raised in *Carroll*; in short, *Carroll* applies only when there is no issue presented as to the sufficiency of the agency's proof of mailing. Thomas' sole contention was that there was no proof that the agency mailed the hearing notice. *Dozier v. Department of Emp. Servs.*, App. D.C., 498 A.2d 577 (1985).

**Computation of 10-day period.** — The 10-day period for appeal from the initial determination of the claims deputy that the unemployment compensation claimant was disqualified from receiving unemployment benefits runs from the date on which the claimant received notice of the initial determination rather than from the date on which the determination was mailed. *Riley v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 278 A.2d 691 (1971).

**Board without authority to extend time limit.** — The Board has no authority to extend the time limitation as to a petitioner who filed his appeal from the determination that he had received benefits to which he was not entitled 3 days beyond the 10-day time limit, even though the petitioner explained his failure to file a timely appeal as due to the death of his wife. *Gaskins v. District Unemployment Comp. Bd.*, App. D.C., 315 A.2d 567 (1974); *Worrell v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1036 (1978).

**But whether employer's appeal tolls period remains undecided.** — *Gaskins v. District Unemployment Comp. Bd.*, App. D.C., 315 A.2d 567 (1974) (which held that the Board could not extend time limit for taking appeal), does not resolve the question whether an employer's timely appeal tolls the 10-day period within which the employee must note his or her own appeal under subsection (b) of this section. *Worrell v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1036 (1978).

**Evidence to support claim.** — Ordinarily an applicant's ex parte certificate may permit an initial determination of eligibility for compensation benefits, but if an appeal is taken and the claim is put in issue, the claimant may receive benefits only if there is evidence to support a finding by the Board that the appli-

cant is available for work. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Comp. Bd.*, 392 F.2d 479 (D.C. Cir. 1968).

In order to support a finding that the claimant is available for work, the claimant must adduce evidence that he has conducted an active search for work. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Comp. Bd.*, 392 F.2d 479 (D.C. Cir. 1968).

**Rights of nonfinal employer.** — A nonfinal base period employer, in the absence of the final employer, may develop evidence on the circumstances of a claimant's termination from the final employer in a hearing concerning the possible disqualification of the claimant for benefits. Such a nonfinal employer cannot, however, assert the voluntary quit defense. *Hamel & Park v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 487 A.2d 603 (1985).

**Parties to hearing are not bound by rules of evidence.** — *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**Official notice of material fact.** — The Board must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973).

Proposed findings and decision of the Board denying unemployment compensation benefits did not notify the claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact, and thus the claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973).

**Telephone hearings.** — Where the hearing examiner was not connected with employer and did not state purpose of call, subsequent telephone hearing conducted without employer participation denied the employer an opportunity to be heard and violated due process. *Sterling v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 513 A.2d 253 (1986).

The telephone hearing process for resolving interstate unemployment compensation claims is not, *per se*, a violation of due process of law. *Sterling v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 513 A.2d 253 (1986).

**Federal agency's findings on reason of employment termination not conclusive.** — When a person seeking unemployment compensation payable under District law has left federal government employment, and the federal employing agency has made findings on the reason for the termination of service, those findings are not conclusive unless the employee had an opportunity for a fair hearing before an impartial tribunal. *Smith v. District Unemployment Comp. Bd.*, 435 F.2d 433 (D.C. Cir. 1970).

The Board is not justified in denying an unemployment compensation claim on the basis of an initial finding of a federal agency, when that finding is being appealed to the Civil Service Commission. *Smith v. District Unemployment Comp. Bd.*, 435 F.2d 433 (D.C. Cir. 1970).

**Sequestering of witnesses is matter resting within Board's sound discretion.** *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978).

**Board's proposed order.** — The Board may adopt, by regulation or by notice to the parties, the order or decision of the appeals examiner, provided the findings of fact and conclusions of law are included therein as its proposed order, or it may serve a new proposed order or decision with new findings of fact and conclusions of law on the parties. *Wallace v. District Unemployment Comp. Bd.*, App. D.C., 289 A.2d 885 (1972).

The Board is authorized to provide by a procedural rule that the appeals examiner's decision constitutes the proposed findings and decision of the Board, and in so doing the Board should, at the same time the appeals examiner's decision is issued, provide a time limit in which to file with the Board objections to the appeals examiner's decision. *Carey v. District Unemployment Comp. Bd.*, App. D.C., 304 A.2d 18 (1973).

**Statement of basic findings required.** — A statement of the basic findings from which conclusion that the claimant had established good cause in leaving her employment was derived is required for reviewing an award of unemployment compensation. *National Geographic Soc'y v. District Unemployment Comp. Bd.*, 438 F.2d 154 (D.C. Cir. 1970).

The failure of a Board Appeals Examiner to give reasons in support of an alleged finding that the claimant would have suffered hardship had she accepted the transfer to her employer's new location, creates an insufficient record for review on appeal. *National Geographic Soc'y v. District Unemployment Comp. Bd.*, 438 F.2d 154 (D.C. Cir. 1970).

A 2-sentence decision of the Board, stating that the decision of the appeals examiner should be reversed is inadequate as a finding of fact and a conclusion of law. *Woodridge Nursery Sch. v. Jessup*, App. D.C., 269 A.2d 199 (1970).

Findings of fact, conclusions of law and reasoned application of an agency's policy, if any, must be clearly reflected in an administrative agency's decision when further administrative or judicial review is provided for by statute. *Hill v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 279 A.2d 501 (1971).

**Scope of agency review.** — The District of Columbia Administrative Procedure Act

(DCAPA) (§ 1-1501 et seq.) does not contain the language of the federal Administrative Procedure Act, which provides that, when an agency reviews decisions of a hearing examiner, it has all the powers which it would have in making the initial decision. The omission of this language from the DCAPA was the product of a conscious choice by Congress. *Gunty v. Department of Emp. Servs.*, App. D.C., 524 A.2d 1192 (1987).

**Court's role on review of Board decision.** — In the exercise of its review function, the District of Columbia Court of Appeals is obliged to overturn a decision of the Board when it is found to be arbitrary and capricious or not in accordance with law. *Carpenter v. District Unemployment Comp. Bd.*, App. D.C., 409 A.2d 175 (1979).

If the findings of the Board are supported in the record, a reviewing court may not reverse the Board, even though it may have reached a contrary result based on an independent review of the record. *Adams v. District Unemployment Comp. Bd.*, App. D.C., 414 A.2d 830 (1980).

**Finality of timeliness issue.** — Language of subsection (e) of this section means that only the timeliness issue is "final" for purposes of appellate review. *Nelson v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 530 A.2d 1193 (1987).

**Conclusiveness of Board's findings on appeal.** — The findings and conclusions of the Board are conclusive upon the Court of Appeals if they are supported by evidence in the whole of the administrative record. *Hill v. District Unemployment Comp. Bd.*, App. D.C., 302 A.2d 226 (1973).

**An agency may not reject an appeals examiner's findings of disputed fact based on a resolution of witness credibility unless the examiner's findings are unsupported by substantial evidence.** *Gunty v. Department of Emp. Servs.*, App. D.C., 524 A.2d 1192 (1987).

**Cited in** *Simmons v. District Unemployment Comp. Bd.*, App. D.C., 292 A.2d 797 (1972); *General Ry. Signal Co. v. District Unemployment Comp. Bd.*, App. D.C., 354 A.2d 529 (1976); *Washington Post Co. v. District Unemployment Comp. Bd.*, App. D.C., 377 A.2d 436 (1977); *Williams v. District Unemployment Comp. Bd.*, App. D.C., 383 A.2d 345 (1978); *Kober v. District Unemployment Comp. Bd.*, App. D.C., 384 A.2d 633 (1978); *Adams v. District Unemployment Comp. Bd.*, App. D.C., 414 A.2d 830 (1980); *Konecny v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 447 A.2d 31 (1982); *Town Ctr. Mgt. v. District of Columbia Rental Hous. Comm'n*, App. D.C., 496 A.2d 264 (1985); *Green v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 608 A.2d 1216 (1992).

### § 46-113. Review of Board's decision.

Any person aggrieved by the decision of the Director may seek review of such decision in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 12; June 25, 1936, 49 Stat. 1921, ch. 804; June 4, 1943, 57 Stat. 118, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, §§ 155(c)(44)(C), 163(j)(2); 1973 Ed., § 46-312; Dec. 7, 1974, 88 Stat. 1617, Pub. L. 93-515, title III, § 301(2); Mar. 27, 1993, D.C. Law 9-260, § 210, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 210, 40 DCR 5420.)

**Cross references.** — As to judicial review by District of Columbia Court of Appeals, see § 1-1510.

**Section references.** — This section is referred to in §§ 46-112, 46-120, and 47-1812.11.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**References in text.** — The District of Columbia Administrative Procedure Act, referred to in this section, is Chapter 15 of Title I.

**Exhaustion of administrative remedies requirement is not jurisdictional.** Barnett v. District of Columbia Dep't of Emp. Servs., App. D.C., 491 A.2d 1156 (1985).

**And equity may permit relaxation of requirement in exceptional cases.** Barnett v. District of Columbia Dep't of Emp. Servs., App. D.C., 491 A.2d 1156 (1985).

**Review in Court of Appeals is limited** to a determination of whether the Board's findings of fact are supported by substantial evidence in the record and whether the Board correctly applied the relevant law. Dyer v. District of Columbia Unemployment Comp. Bd., App. D.C., 392 A.2d 1 (1978).

**Unsupported findings set outside.** — The District of Columbia Court of Appeals may hold unlawful and set aside any action or findings and conclusions found to be unsupported by such evidence in the record. Thomas v. District of Columbia Dep't of Labor, App. D.C., 409 A.2d 164 (1979).

**Erroneous denial must be overturned by reviewing court.** — A reviewing court must overturn a denial of benefits erroneously based on conduct substantially different from that which is specified as the reason for the initial discharge. American Univ. v. District of Columbia Dep't of Labor, App. D.C., 429 A.2d 1374 (1981).

**Cited** in Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978); Cumming v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 1010 (1978); Worrell v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 1036 (1978); District of Columbia v. Sullivan, App. D.C., 436 A.2d 364 (1981); Gunty v. Department of Emp. Servs., App. D.C., 524 A.2d 1192 (1987); Nelson v. District of Columbia Dep't of Emp. Servs., App. D.C., 530 A.2d 1193 (1987).

### § 46-114. Administration of provisions of chapter; disclosure of information.

(a) The Director is hereby authorized and directed to administer the provisions of this chapter. The Director is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures as may be necessary to administer this chapter, and to authorize any such person to do any act or acts which could lawfully be done by the Director. The Council of the District of Columbia may, in its discretion, require bond from any employees of the Director engaged in carrying out the provisions of this chapter.

(b)(1) Notwithstanding any other provision of law, the Director is authorized to prescribe all reasonable regulations which may be necessary to implement this chapter; provided, however, that no rule or regulation shall take effect until the end of the 30-calendar-day period (excluding recesses of the Council)

beginning on the day such rules and regulations are transmitted by the Director to the Chairperson of the Council, and then, only if during such 30-calendar-day period, the Council does not adopt a resolution disapproving such rules and regulations.

(2) Prior to the transmission of proposed regulations to the Council, the Director shall submit all proposed regulations to the Board for approval. The proposed regulations will be deemed approved and transmitted to the Council if the Board does not adopt a resolution of disapproval within 35 calendar days of the Board's receipt of the proposed regulations.

(c) The Mayor shall each year, not later than May 1st, submit to Council a report covering the administration and operation of this chapter during the preceding calendar year, and containing such recommendations as the Mayor wishes to make.

(d)(1) The Director shall, whenever it believes that a change in the contribution or benefit rates is necessary to protect the solvency of the Fund, at once recommend such change to Council of the District of Columbia if in session.

(2) By January 1, 1992, the Mayor shall submit to the Council a report designed to provide sufficient reserves in the Fund on December 30th of each year to meet unemployment benefit payments for the forthcoming calendar year.

(3) By October 15th of each year following March 16, 1988, the Mayor shall submit to the Council an annual status report on the Fund. The report shall include information on:

(A) The computation of the employer tax rate to be used for the forthcoming calendar year; and

(B) A review of the prior 2 years and the current year, a forecast of the solvency of the Fund based on provisions of § 46-103(c)(4)(B)(ii) for the next 5 years, and the statistical and economic assumptions upon which the forecast is based.

(e)(1) In the administration of this chapter, the Director shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the District and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970, or other Manpower Acts.

(2) In the administration of the provisions in § 46-108(g), which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the Director shall take such action as may be necessary:

(A) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the Department of Labor; and

(B) To secure to the District the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal Act.

(f) Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner, whether by subpoena or otherwise, revealing the individual's or employing unit's identity.<sup>1</sup> Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this chapter with respect thereto.<sup>1</sup> Subject to such restrictions as the Director may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the agency of any state or the federal agency charged with the administration of programs for food stamps, parent locator services, public housing, Medicaid, aid to families with dependent children, and supplemental security income, or the Department of Public Welfare of the government of any state, or the United States Accounting Office or the Internal Revenue Service of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.<sup>1</sup> Upon request therefor the Director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The Director may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in § 1606(c) of the federal Internal Revenue Code.

(g) In the discharge of the duties imposed by this chapter, the Director and any duly authorized representative thereof shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(h) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Director may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such Court may issue an order requiring such person to appear before the Director or officer designated by the Director, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt

thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Director, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year, or both.

(i) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Director or in obedience to the subpoena of the Director or any officer designated by the Director, or in any cause or proceeding instituted by the Director, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 13; July 2, 1940, 54 Stat. 733, ch. 524, title I, § 1; June 4, 1943, 57 Stat. 118, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1; Aug. 30, 1964, 78 Stat. 696, Pub. L. 88-514, § 1; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(44)(D); Dec. 22, 1971, 85 Stat. 772, Pub. L. 92-211, § 2(41); 1973 Ed., § 46-313; Mar. 3, 1979, D.C. Law 2-129, § 2(dd), 25 DCR 2451; Mar. 3, 1979, D.C. Law 2-139, § 3205(a), 25 DCR 5740; Mar. 16, 1982, D.C. Law 4-86, § 2(f), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(j), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(s), 30 DCR 1371; Mar. 16, 1988, D.C. Law 7-91, § 2(c), 35 DCR 712; Mar. 27, 1993, D.C. Law 9-260, §§ 108, 211, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 108, 211, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 49(c), 41 DCR 5193.)

**Cross references.** — As to rules and regulations, see § 1-319.

As to effective date of D.C. Law 2-139, see § 1-637.1.

As to regulations for payment of benefits, see § 46-108.

As to rules and regulations for reporting for work, see § 46-110.

As to rules and regulations to determine refusal to accept work and voluntary leaving of work without good cause, see § 46-111.

**Section references.** — This section is referred to in §§ 1-637.1, 46-115 and 46-118.

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (f).

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 2-139.** — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee

on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

**Legislative history of Law 4-86.** — See note to § 46-103.

**Legislative history of Law 4-147.** — See note to § 46-103.

**Legislative history of Law 5-3.** — See note to § 46-102.1.

**Legislative history of Law 7-91.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-255.** — See note to § 46-101.

**Expiration of Law 5-3.** — Section 4 of D.C.

Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

Because of the amendment of the expiration provision in § 4 of D.C. Law 5-3 by § 4 of D.C. Law 5-124, the amendments made in this section by D.C. Law 5-3 are not subject to the December 31, 1985, expiration date.

**References in text.** — “Provisions of the Social Security Act that relate to unemployment compensation,” referred to in subsection (e)(1) of this section, may be found in 42 U.S.C. § 501 et seq. and 42 U.S.C. § 1101 et seq.

“The Federal Unemployment Tax Act,” referred to in subsection (e)(1), is a reference to 26 U.S.C. §§ 3301 to 3311.

“The Wagner-Peyser Act,” referred to in subsections (e)(1) and (2), is a reference to 29 U.S.C. § 49 et seq.

“The Federal-State Extended Unemployment Compensation Act of 1970,” referred to in subsection (e)(1), is set forth as a note to 26 U.S.C. § 3304.

Section 1606(c) of the federal Internal Revenue Code, referred to in subsection (f) of this section, is a reference to § 1606(c) of the Internal Revenue Code, 1939, and was repealed by § 1 of the Act of August 16, 1954, 68A Stat. 915, ch. 736, and is now covered by 26 U.S.C. § 3305(c).

**District of Columbia Unemployment Compensation Act Rulemaking Approval Resolution of 1994.** — Pursuant to Proposed Resolution 11-179, deemed approved July 21, 1995, Council approved rules to carry out the purposes of the District of Columbia Unemployment Compensation Act.

**Effect of delegation of administrative authority to Board.** — By delegating administrative authority to the Board, Congress has constituted that body as the primary interpreters of this chapter, and as a consequence courts should give deference to the construction placed on this chapter by the Board. *Cumming v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1010 (1978).

**Confidentiality of information.** — Evidence relating to the practices and methods of the Board is excludible as this section specifically prohibits the disclosure of information given it by employers, and it would be against the public interest to permit obtaining by indirect what is directly prohibited by statute. *Orndorff v. Cohen*, App. D.C., 62 A.2d 794 (1949).

A report filed by claimant’s employer with the Board which stated that the claimant was “discharged for dishonesty, shortages in cash and stock,” was absolutely privileged. *Goggins v. Hoddes*, App. D.C., 265 A.2d 302 (1970).

**Board not required to issue subpoena.** — Although the Board is empowered to issue subpoenas in the discharge of its duties, there is no requirement that the Board issue a subpoena to a party in any given case. *Thomas v. District of Columbia Dep’t of Labor*, App. D.C., 409 A.2d 164 (1979).

Cited in *Stonewall Constr. Co. v. McLaughlin*, App. D.C., 151 A.2d 535 (1959); *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978); *Jones v. District of Columbia Unemployment Comp. Bd.*, App. D.C., 395 A.2d 392 (1978), remand aff’d, App. D.C., 451 A.2d 295 (1982); *Hockaday v. District of Columbia Dep’t of Emp. Servs.*, App. D.C., 443 A.2d 8 (1982).

## § 46-115. Payment of administrative expenses.

(a) All moneys received by the Director from the United States under Title III of the Social Security Act or from other sources for administering this chapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit to be used solely to pay such administrative expenses (including expenditures for rent, for suitable office space in the District of Columbia, and for lawbooks, books of reference, and periodicals), traveling expenses when authorized by the Director, premiums on the bonds of the Director’s employees, and allowances to investigators for furnishing privately-owned motor vehicles in the performance of official duties at rates not to exceed \$65 per month. All such payments of expenses shall be made by checks drawn by the Director and shall be subject to audit by the Mayor of the District of Columbia in the same manner as are payments of other expenses of the District. Notwithstanding the provisions of this section and the provisions of §§ 46-102 and 46-109, the Director is authorized to requisition and receive from the Director’s account in the Unemployment Trust Fund in the Treasury

of the United States of America, in the manner permitted by federal law, such moneys standing to the District's credit in such Fund, as are permitted by federal law to be used for expenses incurred by the Director for the administration of this chapter and to expend such moneys for such purposes. Moneys so received shall, immediately upon such receipt, be deposited in the Treasury of the United States in the same special account as are all other moneys received for the administration of this chapter. All moneys received by the Director pursuant to § 302 of the Social Security Act shall be expended solely for the purposes and in the amounts found necessary by the Department of Labor for the proper and efficient administration of this chapter. In lieu of incorporation in this chapter of the provision described in § 303(a)(9) of the Social Security Act, the Mayor shall include in the Mayor's annual report to Council of the District of Columbia, provided in § 46-114, a report of any moneys received after July 1, 1941, from the Department of Labor under Title III of the Social Security Act, and any unencumbered balances in the Employment Compensation Administration Fund as of that date, which the Department of Labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Department of Labor for the proper administration of this chapter.

(b)(1) There is hereby created a special deposit fund in the Treasury of the United States, separate and apart from the District Unemployment Fund, to be known as the Special Administrative Expense Fund. Notwithstanding any contrary provisions of this chapter:

(A) Interest and penalties collected from employers, and dishonored check penalties authorized by § 1-357, shall after January 31, 1972, be deposited into the Clearing Account in the District Unemployment Fund in the Treasury of the United States for clearance only and shall not, except as provided in paragraph (4) of this subsection, be deemed a part of the District Unemployment Fund;

(B) Thereafter, during each calendar quarter, there shall be transferred from the Clearing Account to such Special Administrative Expense Fund all moneys described in subparagraph (A) of this paragraph collected during the preceding quarter; and

(C) Refunds of such moneys paid into the Special Administrative Expense Fund shall be made from such Fund.

(2) Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of said moneys, be available to finance expenditures for the administration of this chapter. Nothing in this subsection shall prevent said moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this Fund shall be used by the Director for the payment of costs of administration which are found by the Director not to be proper and valid charges payable out of federal grants or other funds received for the administration of this chapter. All

such payments of expenses shall be made by checks drawn by the Director and shall be subject to audit by the District in the same manner as are payments of other expenses of the District.

(3) No expenditure of this Fund shall be made unless and until the Director by written statement of authorization finds that no other funds are available or can properly be used to finance such expenditures. Vouchers drawn to pay expenditures of this Fund shall, among other things, include a copy of the written authorization of the Director hereinbefore referred to.

(4) The moneys in this Fund shall be continuously available to the Director for expenditures and refunds in accordance with the provisions of this subsection and shall not lapse at any time or be transferred to any other fund or account except as are herein provided. If, on October 31st of any calendar year, the balance in this Fund exceeds \$1,000,000 by \$1,000 or more, the Director shall transfer such excess to the Unemployment Trust Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of this Fund in excess of \$10,000 at the end of each month. Such investments shall be made in the same manner as provided in § 904 of the Social Security Act. The interest on, and the proceeds from, the sale of redemptions or any obligations held in this Fund shall be credited to and form a part of this Fund.

(c)(1) There is created a special fund in the General Revenue Fund of the District of Columbia Treasury, which shall be separate from the District Unemployment Fund, to be known as the Interest Account. Notwithstanding any contrary provisions of this chapter:

(A) All interest surcharges collected from employers shall be deposited in the Interest Account; and

(B) All moneys in the Interest Account shall be used for the payment of interest assessed on interest-bearing advances received under Title XII of the Social Security Act.

(2) Any moneys deposited in the Interest Account that are unexpended after all interest-bearing advances and interest assessments are paid to a zero balance shall be transferred to the Unemployment Trust Fund upon certification by the Director that the unexpended funds will not be needed to pay interest charges in the next calendar year. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 14; July 1, 1941, 55 Stat. 540, ch. 272, § 1; June 4, 1943, 57 Stat. 120, ch. 117; 1946 Reorg. Plan No. 2, § 4, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, 63 Stat. 1065; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1; Dec. 22, 1971, 85 Stat. 772, Pub. L. 92-211, § 2(42); 1973 Ed., § 46-314; Apr. 8, 1992, D.C. Law 9-89, § 2(b), 39 DCR 1361; Mar. 16, 1993, D.C. Law 9-200, § 2(b), 39 DCR 9217; Mar. 27, 1993, D.C. Law 9-260, §§ 109, 212, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 109, 212, 40 DCR 5420.)

**Section references.** — This section is referred to in § 46-103.

**Legislative history of Law 9-89.** — See note to § 46-103.

**Legislative history of Law 9-200.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**References in text.** — Title III of the Social Security Act, referred to in (a), is codified as 42 U.S.C. § 501 et seq.

Sections 302 and 303(a)(9) of the Social Security Act, referred to in (a), are codified as 42 U.S.C. §§ 502 and 503(a)(9), respectively.

"Section 904 of the Social Security Act", referred to in (b)(4), is codified as 42 U.S.C. § 1104.

"Title XII of the Social Security Act," referred to in (c)(1)(B), is codified as 42 U.S.C. § 1201 et seq.

## **§ 46-116. District of Columbia Unemployment Compensation Board; powers and duties; tenure of office; compensation.**

(a) There is hereby established the District of Columbia Unemployment Compensation Board, to be composed of the Mayor or his designee as member ex officio, 2 representatives of employers and 2 representatives of employees to be appointed by the Mayor. Each such representative shall be a resident of the District of Columbia. Members of the District of Columbia Unemployment Compensation Board shall be representatives of the population of the District of Columbia. Each representative shall hold office for a term of 3 years; except, that in making initial appointments, the Mayor shall appoint 1 employee and 1 employer representative to serve 2-year terms. Any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The Mayor of the District of Columbia shall be the Chairman of the Board. The District of Columbia Unemployment Compensation Board shall meet at least once in each 3-month period. A majority of the representatives shall constitute a quorum; provided, that 1 employee representative and 1 employer representative are present.

(b) Repealed.

(c) The Mayor of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid \$50 for each day of active service. For the purposes of this subsection, a part of a day shall be construed as an entire day.

(d) Repealed. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15; June 4, 1943, 57 Stat. 121, ch. 117; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; Dec. 22, 1971, 85 Stat. 773, Pub. L. 92-211, § 2(43); 1973 Ed., § 46-315; Mar. 3, 1979, D.C. Law 2-129, § 2(ee), 25 DCR 2451; Mar. 27, 1993, D.C. Law 9-260, § 213, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 213, 40 DCR 5420.)

**Section references.** — This section is referred to in §§ 46-101 and 46-105.

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

## **§ 46-117. Reciprocal arrangements authorized.**

(a) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than 1 state shall be deemed to be services performed entirely within any 1 of the states: (1) in which any part of such individual's service is performed; or (2) in which such individual has his residence; or (3) in which the employing unit maintains a place of business; provided there is in effect, as to

such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

(b) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby potential rights to benefits accumulated under the unemployment compensation laws of 1 or more states or under 1 or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the Fund.

(c) The Director shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(1) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws; and

(2) Avoiding the duplicate use of wages and employment by reason of such combining.

(d) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby contributions due under this chapter with respect to wages for employment shall for the purposes of § 46-105 be deemed to have been paid to the Fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the Fund of such contributions and the actual earnings thereon as the Director finds will be fair and reasonable as to all affected interests.

(e) Reimbursements paid from the Fund pursuant to subsection (c) of this section shall be deemed to be benefits for the purpose of §§ 46-107, 46-108, and 46-109. The Director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the Fund, in accordance with arrangements entered into pursuant to this section.

(f) The administration of this chapter and of state and federal unemployment compensation and public employment service laws will be promoted by cooperation between the District and such states and the appropriate federal agencies in exchanging services and making available facilities and information. The Director is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the

administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner to accept and utilize information, services, and facilities made available to the District by the agency charged with the administration of any such other unemployment compensation or public employment service law.

(g) To the extent permissible under the laws and Constitution of the United States, the Director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of the District or under a similar law of such government.

(h) To the extent permissible under the laws of the District of Columbia and the United States, the Director is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, providing for the recovery of benefits previously paid to individuals having no entitlement to them by offset of benefits due under the provisions of this chapter, the unemployment compensation laws of other states, or the United States. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16; June 4, 1943, 57 Stat. 121, ch. 117; Dec. 22, 1971, 85 Stat. 773, Pub. L. 92-211, § 2(44); 1973 Ed., § 46-316; Mar. 27, 1993, D.C. Law 9-260, §§ 110, 214, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 110, 214, 40 DCR 5420.)

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Court of Appeals cannot compel reciprocal arrangements with foreign governments.** — Although the Board is charged with the power to seek agreement and possibly to agree with a foreign power respecting compensation benefits, the Court of Appeals is not empowered to compel such a result. *Lechter-Siegel v. District Unemployment Comp. Bd.*, App. D.C., 395 A.2d 57 (1978).

**Interstate arrangement applied.** — See

*Benjamin Rose Inst. v. District Unemployment Comp. Bd.*, App. D.C., 338 A.2d 104 (1975), rev'd on other grounds, App. D.C., 355 A.2d 569, cert. denied, 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101 (1976).

**Cited** in *Simmons v. District Unemployment Comp. Bd.*, App. D.C., 292 A.2d 797 (1972); *Jacobs v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 282 (1978); *Cumming v. District Unemployment Comp. Bd.*, App. D.C., 382 A.2d 1010 (1978); *Johnson v. District Unemployment Comp. Bd.*, App. D.C., 408 A.2d 79 (1979).

## § 46-118. Records and reports; inspection; penalties for violation.

(a) Every employing unit, whether or not liable to pay contributions under § 46-103, shall keep such true and accurate work records with respect to all individuals employed by it as the Director may prescribe. Such records shall be open to inspection by the Director and shall be subject to being copied by the Director or the Director's authorized representative at any reasonable time and as often as may be necessary.

(b) The Director may require from any employing unit any sworn or unsworn reports in connection with its business, covering employment, em-

ployees, wages, earnings, unemployment and related matters, as the Director deems necessary to the effective administration of this chapter. Except as hereinbefore provided in § 46-114(f), information thus obtained may not be divulged. Any person who violates any provision of this section or § 46-114(f) shall be fined not less than \$20 nor more than \$200 or imprisoned not longer than 90 days, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 17; June 4, 1943, 57 Stat. 122, ch. 117; 1973 Ed., § 46-317; Mar. 27, 1993, D.C. Law 9-260, § 215, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 215, 40 DCR 5420.)

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Employer's report is privileged.** — A report which the claimant's employer filed with

the Board and which stated that the claimant was "discharged for dishonesty, shortages in cash and stock," was absolutely privileged. Goggins v. Hoddes, App. D.C., 265 A.2d 302 (1970).

## § 46-119. Protection of rights and benefits; child support obligations.

(a) No agreement by any individual to waive any of his rights under this chapter or to pay any part of the contribution payable by his employer with respect to his or any other individual's employment, shall be valid; nor shall any employer make, require, or permit any deduction from the wages payable to his employees for the purpose of paying any part of the contributions required of the employer under this chapter, or require or attempt to induce any individual to waive any right he may acquire under this chapter. Any employer who violates any provision of this subsection shall, for each such offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned not more than 6 months, or both.

(b)(1) Except as hereinafter provided no assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid or enforceable; and the right to any such benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and the benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy whatsoever for the collection of all debts except debts accrued for necessaries furnished to such individual, his spouse, or his dependents during the time when such individual was unemployed.

(2) An individual filing a new claim for unemployment compensation shall disclose, at the time of filing such a claim, whether the individual owes child support obligations as defined under paragraph (8) of this subsection. If any individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the Director shall notify the appropriate state or local child support enforcement agency that the individual has been determined to be eligible for unemployment compensation.

(3) The Director shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under paragraph (8) of this subsection the following:

(A) The amount specified by the individual to the Director to be deducted and withheld under this subsection if neither subparagraph (B) nor (C) of this paragraph is applicable;

(B) The amount (if any) determined pursuant to an agreement submitted to the Director under § 454(19)(B)(i) of the Social Security Act by the appropriate state or local child support enforcement agency, unless subparagraph (C) of this paragraph is applicable; or

(C) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to legal process as that term is defined in § 462(e) of the Social Security Act.

(4) Any amount deducted and withheld under paragraph (2) of this subsection shall be paid by the Director to the appropriate state or local child support enforcement agency.

(5) Any amount deducted and withheld under paragraph (2) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such an individual to the state or local child enforcement agency in satisfaction of the individual's child support obligations.

(6) For purposes of paragraphs (2) through (5) of this subsection, the term "unemployment compensation" means any compensation payable under the state law (including amounts payable by the District pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment).

(7) Deductions shall be made pursuant to this subsection only if appropriate arrangements have been made for reimbursement by the state or local child enforcement agency for the administrative costs incurred by the Director under this subsection which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(8) The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in § 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(9) The term "state or local child enforcement agency" as used in these provisions means any agency of a state or political subdivision thereof operating pursuant to a plan described in paragraph (8) of this subsection.

(c) No individual seeking to establish a claim for benefits shall be charged any fee whatsoever by the Director or the Director's representatives, or by the court or any officer thereof. Any individual claiming benefits in any proceeding before the Director or the Director's representative or the court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the Director. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500 or imprisoned not more than 1 year, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 18; June 4, 1943, 57 Stat. 123, ch. 117; 1973 Ed., § 46-318; Sept. 17, 1982, D.C. Law 4-147, § 2(k), 29 DCR 3347; Mar. 27, 1993, D.C. Law 9-260, § 216,

40 DCR 1007; Sept. 14, 1993, D.C. Law 10-15, § 216, 40 DCR 5420; Feb. 5, 1994, D.C. Law 10-68, § 40(c), 40 DCR 6311.)

**Effect of amendments.** — D.C. Law 10-68 substituted “§ 454(19)(B)(i)” for “§ 454(20)(B)(i)” in (b)(3)(B).

**Legislative history of Law 4-147.** — See note to § 46-103.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-68.** — See note to § 46-101.

**References in text.** — The Social Security Act, which is referred to in subsections (b)(3)(B), (b)(3)(C) and (b)(8), is codified generally as Title 42 of the U.S. Code. Sections 454 (19)(B)(i), 462(e) and 454 of that act are codified as 42 U.S.C. §§ 654(19)(B)(i), 662(e) and 654, respectively. Part D of Title IV of the Social

Security Act is codified as 42 U.S.C. § 651 et seq.

**Editor's notes.** — Paragraphs (4) and (5) of subsection (b) are set forth above as enacted by D.C. Law 4-147. The references to “paragraph (2)” in those paragraphs should probably read “paragraph (3)”.

**Benefits not aggregated with wages.** — The court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining the wife's exemption from attachment, in an absence of showing that the benefits were mingled with the wages or that the debt was for necessaries furnished during unemployment. *Washington Tel. Fed. Credit Union v. Breeden*, App. D.C., 151 A.2d 774 (1959).

## § 46-120. Penalties for false statements or representations.

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment provided for in this chapter or under an employment security law of any other state, of the federal government, or a foreign government for himself or any other individual, shall, for each such offense, be fined not more than \$100 or imprisoned not more than 60 days, or both.

(b) Any employing unit, and any officer or agent of any employing unit or any other person, who furnishes a false record or makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to avoid the payment of any or all of the contributions required of such employing unit under this chapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, or who fails or refuses to pay the contributions or other payment or to furnish any reports required of him under this chapter, shall for each such offense be fined not more than \$1,000 or imprisoned not more than 6 months, or both. For purposes of this subsection an officer of a corporation charged with any duty required by this chapter shall be personally liable to prosecution under this section.

(c) Any person who shall wilfully violate any provision of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$200 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d)(1) Any person who has received any sum as benefits under this chapter to which he is not entitled shall, in the discretion of the Director, be liable to repay such sum to the Director, to be redeposited in the Fund; be liable to have

such sum deducted from any future benefits payable to him under this chapter; or may have such sum waived in the discretion of the Director; provided, however, that no such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience; or in the discretion of the Director such recoupment has been waived. In any case in which, under this subsection, a claimant is liable to repay to the Director any sum, such sum may be collected without interest, by civil action in the name of the Director or by the collection remedy set forth in § 47-1812.11(a). The disbursing officer and certifying officer of the Director shall not be held liable for any amounts certified or paid by them, in good faith, prior to July 25, 1958, or subsequent thereto, to any person where the refund, recoupment, adjustment, or recovery of such amount is waived under this subsection or where such refund, recoupment, adjustment, or recovery under this subsection is not completed prior to the death of the person against whom such refund, recoupment, adjustment, or recovery has been authorized.

(2) The determination of whether a person has received any sum as benefits to which he is not entitled and the review to such a determination shall be made in accordance with §§ 46-112, 46-113, and this section.

(e)(1) Any person who the Director finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to obtain or increase any benefit under this chapter may be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than 1 year commencing with the end of such benefit year. Such disqualification shall not affect benefits otherwise properly paid after the date of such fraud and prior to the date of the ruling of disqualification.

(2) All findings under this subsection shall be made by a claims deputy of the Director and such findings shall be subject to review in the same manner as all other disqualifications made by a claims deputy of the Director.

(f) In all cases where an employer subject to this chapter makes an award of back pay to a claimant who has received benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the benefits paid from the back pay award and shall repay the amount to the Director, who shall deposit it in the Fund and credit the accounts of charged base period employers. If the employer does not comply with this subsection, the Director may treat the unrefunded amount as an unpaid contribution and collect it in the manner provided for collection of delinquent contributions. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 19; June 4, 1943, 57 Stat. 123, ch. 117; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; 1973 Ed., § 46-319; Mar. 3, 1979, D.C. Law 2-129, § 2(ff), 25 DCR 2451; Mar. 27, 1993, D.C. Law 9-260, §§ 111, 217, 302, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, §§ 111, 217, 302, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 39(c), 41 DCR 5193.)

**Section references.** — This section is referred to in § 47-1812.11.

**Effect of amendments.** — D.C. Law 10-255 validated a previously made change in (f).

**Legislative history of Law 2-129.** — See note to § 46-101.

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

**Legislative history of Law 10-255.** — See note to § 46-101.

**Elements of violation of subsection (e)** of this section essentially track the common-law requirements for proof of fraud, those elements being: False representation of a material fact or failure to disclose a material fact, knowledge of the falsity, intention to induce reliance upon the misrepresentation, and actual reliance. Rodriguez v. District of Columbia Dep't of Emp. Servs., App. D.C., 452 A.2d 1170 (1982), appeal dismissed and cert. denied, 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490 (1983).

**Violation occurs at moment false representation or omission of material fact is made** with the intent to obtain or increase any benefit, and there is no indication whatsoever that actual receipt of unemployment compensation funds is required nor that the party to whom the misrepresentation is made must rely on it to his or the Board's detriment. Lewis v. United States, App. D.C., 389 A.2d 306 (1978).

**Knowledge requirement of subsection (e) is subjective**, relating to the particular individual charged with a fraud rather than to a hypothetical reasonable person. Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978).

**But actual knowledge not required.** — The knowledge required for fraud under subsection (e) of this section does not necessarily

mean actual knowledge of falsity, for the scienter element is satisfied if a representation is recklessly and positively made without knowledge of its truth. Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978).

**Significance of obviousness of misrepresentation.** — The fact that a misrepresentation was one that a man of ordinary care and intelligence in the maker's situation would have recognized as false is not enough to impose liability for a knowing misrepresentation under subsection (e) of this section, but it is evidence from which lack of honest belief may be inferred. Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978).

**Claimant's intellectual capacity is matter to be taken into account** in subsection (e) cases in determining credibility if the claimant testifies that he believed his representation to be true. Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978).

**Particularized findings required for subsection (e) disqualification.** — Absent particularized findings of fraud with reference to an individual claimant, a denial of unemployment benefits under subsection (e) of this section would be arbitrary, capricious, and an abuse of discretion. Jacobs v. District Unemployment Comp. Bd., App. D.C., 382 A.2d 282 (1978).

**Section is identical with attempted false pretenses proscribed by § 22-103.** Lewis v. United States, App. D.C., 389 A.2d 306 (1978).

**Cited in Dowdy v. District of Columbia Dep't of Emp. Servs., App. D.C., 515 A.2d 399 (1986).**

## § 46-121. Disposition of fines.

The amount of all fines collected pursuant to the provisions of this chapter shall be turned over to the Director and by the Director paid into the District Unemployment Fund. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20; June 4, 1943, 57 Stat. 124, ch. 117; 1973 Ed., § 46-320; Mar. 27, 1993, D.C. Law 9-260, § 218, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 218, 40 DCR 5420.)

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

## § 46-122. Representation of Board in court.

(a) On the request of the Director the United States Attorney for the District of Columbia shall represent the Director in any action in court arising under this chapter, or in connection with the administration and enforcement of its provisions, or the rules and regulations authorized thereunder, including actions for the collection of contributions due hereunder; but in any civil action the Director may be represented by the Director's own counsel.

(b) Violations of any provision of this chapter shall be prosecuted by the United States Attorney for the District of Columbia. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 21; June 4, 1943, 57 Stat. 124, ch. 117; 1973 Ed., § 46-321; Mar. 27, 1993, D.C. Law 9-260, § 219, 40 DCR 1007; Sept. 24, 1993, D.C. Law 10-15, § 219, 40 DCR 5420.)

**Legislative history of Law 9-260.** — See note to § 46-101.

**Legislative history of Law 10-15.** — See note to § 46-101.

### **§ 46-123. All audits by Office of the Inspector General.**

All audits herein prescribed shall be made by the Office of the Inspector General in the same manner as are all other audits of the District. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 22; June 4, 1943, 57 Stat. 125, ch. 117; 1973 Ed., § 46-322.)

**Office of Auditor abolished.** — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director all of the functions and positions of the Office of the Auditor. Reorganization Order No. 19 established in the Department of General Administration an Internal Audit Office headed by an Internal Audit Officer. The function of post auditing benefit payments made by the District Unemployment Compensation Board referred to in § 46-109 was transferred from the Auditor to the Internal Audit Officer. The functions of auditing all moneys paid to and collected by the District Unemployment Board as provided in subsection (a) of § 46-105, were transferred from the Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. The function of the Auditor of the District concerning the prior audit of refunds under subsection (i) of § 46-105 was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20, dated November 10, 1952. Reorganization Order No. 20 was superseded by Organization Order No. 121, dated December

12, 1957. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 19 and Organization Order No. 121 were revoked and replaced by Organization Order No. 3, dated December 13, 1967. Parts IVB and IVC of the latter Order established within the newly created Department of General Administration, an Internal Audit Office and a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by paragraph 4 of Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue, were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. The Office of Municipal Audit and Inspection was replaced by Mayor's Order No. 79-7, dated January 2, 1979, which Order established the Office of the Inspector General of the District of Columbia.

### **§ 46-124. Right to amend or repeal reserved.**

All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of Congress to amend or repeal this chapter at any time. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 23; June 4, 1943, 57 Stat. 125, ch. 117; 1973 Ed., § 46-323.)

## § 46-125. Severability.

If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 24; June 4, 1943, 57 Stat. 125, ch. 117; 1973 Ed., § 46-324.)

## § 46-126. Short title.

This chapter may be cited as the "District of Columbia Unemployment Compensation Act." (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 26; June 4, 1943, 57 Stat. 125, ch. 117; 1973 Ed., § 46-325.)

## § 46-127. Mayor of the District of Columbia.

(a) Wherever this chapter prescribes the performance of a duty by any official or agency of the District of Columbia, such duty shall be performed by the Mayor of the District of Columbia or such officer, employee, or agency as the Mayor may delegate to perform the duty for him.

(b) Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by or under the authority of Reorganization Plan No. 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished. (Aug. 28, 1935, ch. 794, § 27; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; 1973 Ed., § 46-326.)

**References in text.** — Reorganization Plan No. 5 of 1952, referred to in subsection (b) of this section, is set out in its entirety in Volume 1 at page 116.

**Change in government.** — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

## § 46-128. Review of additional benefits program.

During the last quarter of 1986, the Committee on Housing and Economic Development of the Council of the District of Columbia shall review the status of the additional benefits program in the context of the solvency of the Unemployment Compensation Trust Fund and make a recommendation as to its continuation. (Mar. 13, 1985, D.C. Law 5-124, § 3, 31 DCR 5165.)

**Legislative history of Law 5-124.** — See note to § 46-103.











